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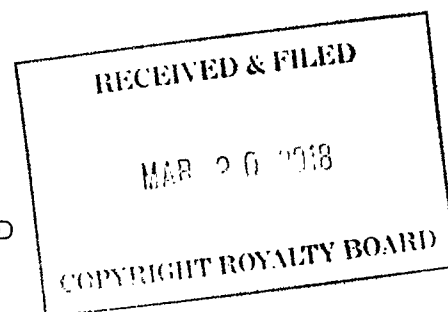
IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

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5) Docket No.

6 DETERMINATION OF CABLE) 14-CRB-0010-CD

7 ROYALTY FUNDS) (2010-2013)

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9 BEFORE: THE HONORABLE SUZANNE BARNETT

10 THE HONORABLE JESSE M. FEDER

11 THE HONORABLE DAVID R. STRICKLER

12

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23 Reported by: Joe W. Strickland, RPR, CRR, CRC

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P R O C E E D I N G S

(9:23 a.m.)

JUDGE BARNETT: Good morning. All but the Witness; please be seated. Welcome back, Mr. Strickland.

THE REPORTER: Thank you.

JUDGE BARNETT: Please raise your right hand.
Whereupon,

SUE HAMILTON

was called as a witness and, having been first duly sworn, was examined and testified as follows:

JUDGE BARNETT: Please be seated.

Ms. Plovnick?

DIRECT EXAMINATION

BY MS. PLOVNICK:

Q. Good morning, Ms. Hamilton. My name is Lucy Plovnick, and I represent the Program Suppliers in this proceeding. How are you?

A. Fine, thank you.

Q. Would you state your name and spell it for the record.

A. Sue Hamilton, S-U-E, H-A-M-I-L-T-O-N.

Q. What is your educational background?

A. Liberal arts undergrad at Northwestern

1 University and Carleton College, and a law
2 degree from Stanford Law School.

3 Q. Can you please give us an overview of
4 your professional background.

5 A. Over 20 years in the cable television
6 business as a programming executive working for
7 large cable companies, and more recently,
8 consulting.

9 Q. Where do you work currently?

10 A. Hamilton Media LLC.

11 Q. And what is your position at Hamilton
12 Media?

13 A. Founder and Principal.

14 Q. We will come back to Hamilton Media in
15 just a minute, but before we do that where did
16 you work immediately prior to Hamilton Media?

17 A. My last corporate job was at Charter
18 Communications.

19 Q. Can you tell us about the different
20 roles you had at Charter and the
21 responsibilities associated with those roles?

22 A. My role as head of the Programming
23 Department initially, as senior vice president,
24 and then I was promoted to executive vice
25 president.

1 Q. Now, did those responsibilities relate
2 to programming decision-making?

3 A. Yes, yes, I was the ultimate
4 decision-maker.

5 Q. And did that include responsibilities
6 with regard to distant signals?

7 A. Yes.

8 Q. Now, when you were at Charter, were
9 you the person responsible for making
10 programming decisions with regard to distant
11 signals?

12 A. Yes.

13 Q. How many Charter systems were you
14 responsible for making programming decisions on
15 while at Charter?

16 A. All of them. It was many hundreds of
17 systems that covered over 40 States at the
18 time.

19 Q. And were those large systems and small
20 systems?

21 A. Yes.

22 Q. About how many large or Form 3 systems
23 would you say?

24 A. I would say roughly 100.

25 Q. How long were you at Charter?

1 A. Nearly four years.

2 Q. And did you receive any awards or
3 recognitions while you were at Charter?

4 A. I received several awards. I was
5 named to the Cablefax 100 Most Influential
6 People in cable a couple of those years. And
7 three of those years, named as one of the 50
8 Most -- I think -- Influential Women in Cable.
9 I was a Wonder Woman in 2006. That was an
10 accolade that was given by Multichannel News
11 and Women in Cable and Telecommunications.

12 Q. After leaving Charter, did you
13 continue to do any work for them?

14 A. I consulted for them for about -- I
15 can't remember how long -- nine months to a
16 year.

17 Q. And before you were working at
18 Charter, what were you doing?

19 A. Immediately prior to that, I was the
20 acting head of programming for Adelphia
21 Communications. While they were in bankruptcy,
22 they weren't able to appoint me to an executive
23 position at the time, and ultimately I went
24 over to Charter before they came out of
25 bankruptcy.

1 Q. What were your responsibilities at
2 Adelphia while you were in that role?

3 A. The same. Programming acquisitions,
4 content acquisitions.

5 Q. Before you were working at Adelphia,
6 where did you work?

7 A. That would have been AT&T Broadband.
8 That was the name of the company that succeeded
9 Tele-Communications, Incorporated, TCI, where I
10 started.

11 Q. And what was your role at AT&T and
12 TCI?

13 A. One of several lieutenants to the head
14 of the programming department.

15 Q. And prior to working at AT&T, what
16 were you doing?

17 A. Immediately prior, I was a partner at
18 Kirkland & Ellis.

19 Q. Ms. Hamilton, are you on any public
20 boards that are related to the cable industry?

21 A. Related to the cable industry? I
22 suppose, yes, two. One is FTD Inc., which is
23 an affiliate of Liberty Interactive, a company
24 that is controlled by John Malone, who had been
25 the Chairman and CEO of TCI,

1 Tele-Communications Incorporated, where I
2 started in cable in 1993.

3 And more recently, GCI Liberty, which
4 is also controlled by a Liberty Media
5 affiliate.

6 Q. Why were you chosen for those boards?

7 A. I would hope for my business acumen,
8 and in particular for my cable experience, I
9 would guess, for GCI Liberty.

10 Q. Turning back to your consulting work
11 for Hamilton Media, what sort of consulting
12 work do you do at Hamilton Media?

13 A. I represent big, small -- kind of done
14 it all -- both content providers and
15 distributors, disruptive content -- excuse me,
16 disruptive distributors, including
17 over-the-top, satellite companies, cable
18 companies; a variety of things, broadcasters,
19 cable networks.

20 JUDGE BARNETT: Could you describe
21 over-the-top for us new initiates.

22 THE WITNESS: Sure. Of course, of
23 course. A number of different entities have
24 begun delivering -- aggregating content and
25 delivering it in packages over the Internet,

1 rather than over a cable wire. So that you are
2 kind of -- anyone is able to get it if they
3 have an Internet connection.

4 JUDGE BARNETT: Thanks.

5 BY MS. PLOVNICK:

6 Q. What kind of clients do you work with?

7 A. A variety, large and small.

8 Q. Have you worked with any collectives
9 of cable systems?

10 A. Yes, I worked for the National Cable
11 Television Cooperative, which is a co-op -- a
12 buying cooperative, basically, of a number of
13 smaller and mid-size cable companies.

14 Q. Have you done work for broadcast
15 networks?

16 A. Yes.

17 Q. For cable operators?

18 A. Yes.

19 Q. Cable networks?

20 A. Yes.

21 Q. So when you've done the consulting
22 work for these companies, what kind of projects
23 did you do?

24 A. Everything from negotiating the actual
25 distribution deals for the content, both for

1 the content provider and for the distributor;
2 to strategic planning; to financial
3 forecasting; creating business models;
4 everything.

5 Q. Have you negotiated agreements with
6 any major CSOs over the last ten years?

7 A. I've negotiated agreements with all of
8 them.

9 Q. And which ones?

10 A. Comcast, DirecTV, AT&T, Dish Network,
11 Verizon, Charter, Cox, Suddenlink, Altice. A
12 variety.

13 Q. What kind of agreements were those?

14 A. Those were all distribution agreements
15 for content.

16 Q. And when you say content, does that
17 mean programming?

18 A. Yes, programming networks.

19 Q. Have you conducted valuation analysis
20 of television programming of the parties in
21 your work?

22 A. I guess I would argue that all of my
23 work involves valuation of content and
24 programming, yeah.

25 Q. Have you ever been asked to provide

1 expert testimony as a part of your work?

2 A. Yes.

3 Q. And have you ever been accepted as an
4 expert witness by a Court in any prior
5 proceeding?

6 A. Yes.

7 Q. In which proceeding?

8 A. I represented Dish Network in Federal
9 District Court in Oregon.

10 MS. PLOVNICK: Your Honors, I would
11 move to tender Ms. Hamilton as an expert in the
12 valuation of television programming in the
13 cable industry.

14 JUDGE BARNETT: Ms. Hamilton is so
15 qualified.

16 BY MS. PLOVNICK:

17 Q. Ms. Hamilton, what were you asked to
18 do for this proceeding?

19 A. I was asked to evaluate the selection
20 and other processes for -- for making
21 programming decisions at cable companies
22 specifically, and to review the programming
23 categories that have been constructed for
24 purposes of reviewing Copyright Royalties and
25 looking at the Bortz survey, as well as the

1 survey that has been conducted by the Program
2 Suppliers.

3 Q. So please take a look at the black
4 binder in front of you with the green cover and
5 turn to Exhibit 6008. It's on the screen, as
6 well.

7 A. I have it.

8 Q. Ms. Hamilton, what is the title of
9 Exhibit 6008?

10 A. Direct Testimony of Sue Ann R.
11 Hamilton.

12 Q. Is Exhibit 6008 your Direct Testimony
13 for this proceeding?

14 A. Yes.

15 Q. Do you have any corrections to
16 Exhibit 6008?

17 A. No.

18 Q. Please turn to Exhibit 6009. Let me
19 know when you are there. Do you have it?

20 A. I have it.

21 Q. What is the title of that document?

22 A. Rebuttal Testimony of Sue Ann R.
23 Hamilton.

24 Q. Is Exhibit 6009 your Rebuttal
25 Testimony for this proceeding?

1 A. Yes.

2 Q. Do you have any corrections to
3 Exhibit 6009?

4 A. Yes, I have one correction.

5 Q. What is that correction?

6 A. It is to Footnote 2, I think it is on
7 page 9. Yes, I would like to correct the
8 percentages in that footnote to be consistent
9 with those that were corrected by Dr. Gray.

10 Q. All right. So just so this doesn't
11 become a memory exercise, would you turn to
12 Exhibit 6036 which was admitted and is
13 Dr. Gray's testimony. And that is in the other
14 binder.

15 A. All right.

16 Q. And if you turn to page 16 of Exhibit
17 6036, which is also showing on the screen. And
18 you can look at the paper copy.

19 A. Great. I have it.

20 Q. Is this the table in Dr. Gray's
21 testimony that you relied on for Footnote 2 in
22 your Rebuttal Testimony?

23 A. Yes, it is.

24 Q. And what percentages should there be
25 in Footnote 2 of your Rebuttal Testimony?

1 A. With respect to the compensable
2 retransmissions, I'd like to correct that in
3 2012, that should be .12 percent, rather than
4 .13 percent. In 2013, it should be
5 .21 percent, rather than .22 percent. And then
6 for the JSC's share of all distant signal
7 volume, those numbers should be .66 percent in
8 2010, .70 percent in 2011, .49 percent in 2012,
9 and .73 percent in 2013.

10 Q. Thank you, Ms. Hamilton. With those
11 corrections, do you declare Exhibits 6008 and
12 6009 to be true and correct?

13 A. Yes.

14 Q. All right. You can take it down.

15 Now, Ms. Hamilton, let's talk about
16 your Direct Testimony, which is Exhibit 6008.
17 You testified that you worked at Charter for
18 several years?

19 A. Yes.

20 Q. And since leaving Charter, you've
21 continued to work with cable operators and the
22 cable television industry?

23 A. That's correct.

24 Q. Over the course of your time working
25 in the cable industry, has the cable industry

1 changed?

2 A. Yes.

3 Q. How has it changed?

4 A. The cable industry has become much
5 more consolidated. A number of companies have
6 joined together, have merged, and the companies
7 themselves are larger and operate more on a
8 centralized corporate level.

9 Q. Has that consolidation had an impact
10 on the way that cable operators make
11 programming decisions?

12 A. Yes, I think the decision-making has
13 become more centralized, as well.

14 Q. When you were at Charter, you were
15 responsible for making programming decisions;
16 correct?

17 A. Yes.

18 JUDGE STRICKLER: Excuse me,
19 Ms. Hamilton. Good morning. When did this
20 change to centralized decision-making as it
21 related to programming occur? What year?

22 THE WITNESS: Well, it's been an
23 evolution, I would say. It has been a trend
24 since I joined the industry in 1993. On the
25 third day of my employment, it was announced

1 that we were going to be acquired by another
2 company, which ultimately didn't happen. But
3 there has been a trend towards consolidation.

4 JUDGE STRICKLER: Thank you.

5 BY MS. PLOVNICK:

6 Q. And you mentioned when you were
7 working at Charter you were responsible for
8 many cable systems, large and small. And your
9 decision-making included distant signals for
10 all of those systems?

11 A. It was under my auspices, yes.

12 Q. When you were at Charter, were any
13 programming decisions made at the individual
14 system level?

15 A. The ultimate decision was mine, no.
16 There was certainly input from the field, as we
17 called it, from the systems.

18 Q. So why was decision-making
19 consolidated as you testified?

20 A. Well, I think the consolidation has
21 not been limited to the distribution side.
22 There has been quite a bit of consolidation on
23 the network side as well. So as the content
24 companies themselves have become larger and
25 more -- with different elements, broadcast

1 network and cable networks have joined
2 together, for example, there has been a very
3 high level of strategy and frankly more dollars
4 involved. And so many more decisions are held
5 at the highest level of the company.

6 Q. When you needed to make a programming
7 decision as a cable operator, what factors did
8 you consider or think were important in making
9 those decisions?

10 A. Just a number of different --
11 different factors. The viewership that I could
12 actually demonstrate or that I could predict
13 would occur. Certainly the legacy of the
14 carriage, if a channel had been on, the
15 tendency was to allow it to remain on our
16 channel lineup.

17 Bundling is a huge factor and became
18 more and more so during my time as a
19 distributor as networks used leverage to
20 influence carriage of other channels. And
21 finally the cost was always a factor.

22 Q. Ms. Hamilton, did you prepare a
23 demonstrative slide to assist with summarizing
24 these points?

25 A. Yes, I did.

1 MS. PLOVNICK: Albina, could you
2 please put on Slide Number 1.

3 BY MS. PLOVNICK:

4 Q. We are hopefully going to make that
5 large enough for everyone to see.

6 All right. So Ms. Hamilton, are these
7 the four factors that you just mentioned?

8 A. Yes, they are.

9 Q. Let's talk about the first factor
10 which is subscriber viewing behavior.

11 A. Yes.

12 Q. Can you please tell us why as a CSO
13 you would consider subscriber viewing in your
14 programming decision?

15 A. That is the stock and trade of our
16 cable company, primarily -- especially in those
17 days when that was literally the only service
18 being offered by the company, a video business,
19 we needed to attract and retain subscribers.
20 And the only thing that we were selling was the
21 variety of programming that we could make
22 available.

23 Q. So the second factor you mentioned was
24 legacy carriage. Why was that important in
25 your decision-making?

1 A. It's important to provide a level of
2 continuity to customers. Every channel has its
3 constituency regardless of its absolute
4 viewership numbers. There is always someone
5 who is happy to keep watching a channel and
6 it's very expensive to lose a subscriber. And
7 that has been even exacerbated by the -- or
8 enhanced, I guess -- by the different product
9 offering now that the mix that cable companies
10 are offering, it is not just video. It's also
11 Internet service and telephone service, land
12 line telephone service. So it's in most cases
13 much more economic to maintain the cost than to
14 risk losing subscribers.

15 Q. The term legacy carriage, can you
16 define that term?

17 A. That was just a term of art that I've
18 used. I think it's used in the industry. It
19 would be associated with anyone that has been
20 on for a while.

21 JUDGE STRICKLER: Excuse me,
22 Ms. Hamilton. I wanted to ask you a question
23 about the interrelationship of points 1 and 2
24 on your screen.

25 THE WITNESS: Sure.

1 JUDGE STRICKLER: Were there
2 situations ever where legacy carriage had
3 viewing over time that was so low that your
4 need to consider viewing was such that you
5 still had to eliminate legacy carriage because
6 of low viewing?

7 THE WITNESS: It was rare. We did
8 cost benefit analyses and I would add point
9 number four, frankly, I think those are
10 inextricably linked. It doesn't take losing
11 very many subscribers before it's not a wise
12 decision or rational decision to take
13 programming off. So inertia tends to carry.

14 But, yes, certainly we looked at that
15 frequently.

16 JUDGE STRICKLER: So am I correct to
17 understand your testimony that you would keep
18 legacy carriage even with low viewing.

19 THE WITNESS: Occasionally, yes.

20 JUDGE STRICKLER: Occasionally or
21 consistently?

22 THE WITNESS: More consistently than I
23 would like.

24 JUDGE STRICKLER: So there is no -- I
25 won't ask you the next question. Thank you.

1 BY MS. PLOVNICK:

2 Q. So the third point you mentioned were
3 bundling considerations. What do you mean by
4 bundling?

5 A. Again, that's sort of a term of art in
6 the industry. It involves tying of one network
7 to one or more other networks. I think
8 originally, we saw a lot of this with the
9 network consolidations. And, in particular,
10 when retransmission consent became law in 1993,
11 a lot of broadcast networks used that leverage
12 to either launch or further the distribution of
13 other networks, cable networks included.

14 Q. Was bundling important or related to
15 decision-making with regard to distant signals?

16 A. Not often, but yes.

17 Q. And during your time as a CSO, were
18 there any distant signals for which bundling
19 was an important consideration?

20 A. Yes, the WGN signal was -- and in this
21 case, it was not necessarily a formal
22 arrangement, but it was tied to carriage of
23 Tribune broadcast stations.

24 Q. Can you tell us a little bit more
25 about that?

1 A. Sure. Those deals were negotiated in
2 tandem. And in my case, at least at Charter,
3 having inherited pretty broad carriage of WGN,
4 that was table stakes for negotiating the
5 Tribune Media retrans deal.

6 Q. Based on your experience, why would a
7 CSO want to carry WGN as a distant signal?

8 A. To enable or otherwise benefit the
9 Tribune retransmission consent. Tribune Media
10 stations are very strong stations. They're all
11 Big Four network affiliates, I believe. And so
12 those being must-have, and WGN being part of
13 the negotiation, it would be necessary to,
14 again, not make the decision to launch WGN, but
15 to perpetuate its carriage.

16 JUDGE STRICKLER: In connection with
17 that point that you just made on page 7 of your
18 testimony, you reference a time frame. And the
19 time frame you reference is, quote, "during the
20 period from 1994 through at least 2010." I
21 don't know if you see it there or you recall
22 the testimony.

23 THE WITNESS: Sure.

24 JUDGE STRICKLER: It's page 7 of your
25 written Direct Testimony, Exhibit 6008. Why

1 the relatively vague end date in terms of your
2 time frame through at least 2010? Why can't
3 you specify a more specific time period?

4 THE WITNESS: That is the last set of
5 negotiations that I have any familiarity with.
6 I haven't directly negotiated any deals with
7 Tribune Media, certainly, since 2010.

8 JUDGE STRICKLER: So you just can't
9 speak to whether this factor of bundling --
10 with regard to bundling continued beyond 2010
11 out of your own personal experience?

12 THE WITNESS: That's correct.

13 JUDGE STRICKLER: Thank you.

14 BY MS. PLOVNICK:

15 Q. Would the deal negotiated in 2010 have
16 had applications for the years following 2010?

17 A. To the extent that both parties wanted
18 to extend the terms, yes.

19 JUDGE STRICKLER: Well, counsel's
20 question was conditional. I want to change the
21 question a little bit. The question I'm more
22 interested in is not would it have continued
23 beyond 2010; did it continue beyond 2010, if
24 you know?

25 THE WITNESS: I have no idea. Sorry.

1 BY MS. PLOVNICK:

2 Q. So let's talk about the third
3 factor -- well, actually before I go there,
4 Ms. Hamilton, are you aware that Mr. Singer and
5 Hartman criticized your testimony regarding the
6 reasons that a CSO would want to carry WGN as a
7 distant signal?

8 A. I am aware of that.

9 Q. Do you have a response to those
10 criticisms?

11 A. Their experience apparently is
12 different from mine in terms of the deals that
13 were negotiated and presented. I don't know if
14 they have worked on those deals or not. I
15 think in the case of DirectTV, they had a very
16 different -- different regime for carriage of
17 WGN and retrans for Tribune.

18 Q. Is that because DirectTV is a satellite
19 carrier?

20 A. Yes.

21 Q. The last thing you talked about that
22 was important to you as a CSO in making
23 preliminary decisions was cost. And can you
24 explain to the Judges why cost was important?

25 A. Cost is very important because the

1 profit margins of cable companies have
2 progressively shrunk over my 20-plus years in
3 the industry. The expense of providing content
4 is greater and greater and the ability to
5 charge customers, subscribers more is limited.
6 And so it's important to protect that margin in
7 deciding -- in making programming decisions.

8 JUDGE FEDER: How big a factor is
9 retransmitted broadcast stations in determining
10 cost to a cable system?

11 THE WITNESS: Retransmission consent
12 is a huge factor.

13 JUDGE FEDER: Putting aside
14 retransmission consent, I'm talking about what
15 we are concerned with here.

16 THE WITNESS: The distant signals?

17 JUDGE FEDER: The Copyright Royalties
18 for distant signals.

19 THE WITNESS: That's very small.

20 JUDGE STRICKLER: I just want to make
21 sure I understand your answer to the Judge's
22 question, because on page 8 you say, "The cost
23 associated with carrying distant stations was
24 immaterial." So that is different than the
25 retransmission consent cost?

1 THE WITNESS: Yes, local station
2 retransmission consent has become very
3 expensive.

4 JUDGE STRICKLER: You're talking about
5 local, not distant?

6 THE WITNESS: Yes, but distant is
7 very, very small. The distant signal
8 Copyright, the compulsory.

9 JUDGE STRICKLER: Okay. So you said
10 in response to Counsel's question a moment ago
11 that cost is very important, but as it relates
12 to distant retransmission cost is immaterial.
13 How do those two reconcile?

14 THE WITNESS: Those are correct. The
15 cost of content writ large is a big
16 consideration. And relative to all of the
17 other content that is being provided, the cost
18 of distant signals is very small. So it is
19 less of a factor, but cost generally is a major
20 factor.

21 JUDGE STRICKLER: Thank you.

22 BY MS. PLOVNICK:

23 Q. You actually fixed some of my next
24 questions here. What percentage of your
25 programming budget when you were a cable system

1 operator would be devoted to distant signal
2 programming?

3 A. I don't know the exact number, but a
4 very small percentage. Probably 1 percent. I
5 don't know. I'm just guessing.

6 Q. Did you consider that a significant
7 percentage of your total programming?

8 A. No, no.

9 Q. And so was cost an important factor to
10 you as a CSO in deciding what distant signals
11 to carry?

12 A. No, it was a fairly -- it was a
13 constant budget number that I carried over from
14 year to year.

15 Q. So out of these four factors we've
16 been talking about and that are shown on the
17 demonstrative, if you had to rank them in terms
18 of importance, what would be the most important
19 factor to a cable system operator in selecting
20 distant signals to carry?

21 A. I would say the viewing behavior, the
22 viewership.

23 Q. What would be the least important
24 factor?

25 A. In the distant signal decision?

1 Q. In distant signal decisions?

2 A. It would be cost, because it was in
3 absolute terms and relative terms so small.

4 JUDGE STRICKLER: I want to go back
5 for a moment to your testimony with regard to
6 WGN, sort of the forced bundling that you spoke
7 of before.

8 THE WITNESS: Yes.

9 JUDGE STRICKLER: Given that that
10 forced bundling was the reason you had to
11 carry -- if I understand your testimony
12 correctly -- WGN as a distant signal, is it
13 fair to say that, therefore, the decision to
14 carry WGN wasn't based on viewing or
15 subscribership or program content, but simply
16 because of the, for lack of a better word,
17 coercion by Tribune? That if you want our
18 other valuable stations, you are going to have
19 to add WGN to the package?

20 THE WITNESS: That's fair. And in my
21 case it wasn't adding WGN, it was just
22 continuing carriage that had been -- that I
23 inherited.

24 JUDGE STRICKLER: So separate and
25 apart from your testimony about legacy

1 carriage, the reason you continued it was
2 Tribune -- again, for lack of a better
3 phrase -- made you an offer that you couldn't
4 refuse?

5 THE WITNESS: Correct.

6 BY MS. PLOVNICK:

7 Q. If you turn to pages 9 through 10 of
8 Exhibit 6008, your Direct Testimony, now. Tell
9 me when you're there.

10 A. Okay.

11 Q. So we are going to get this on the
12 screen as well. Working on it. Page 9 once
13 again. Pages 9 and 10. All right. So in
14 pages 9 to 10, you had talked about the
15 different programming category definitions the
16 Judges adopted for this proceeding. Do you see
17 that?

18 A. Yes.

19 Q. Are these programming category
20 definitions the same as the genres of
21 programming that would commonly be used in the
22 cable industry?

23 A. No.

24 Q. So how are they different?

25 A. These are very technical and I guess

1 nuanced. They don't really comport with the
2 typical categorization that I would think of in
3 the cable industry.

4 Q. Are there any program categories in
5 use in this proceeding that stand out to you as
6 problematic?

7 A. I think the Program Suppliers
8 definition is confusing. It's not at all
9 apparent that there would be any Sports
10 included in that definition at all.

11 Q. How about the Joint Sports Claimants
12 definition?

13 A. I think that is -- on its face, I
14 understand it. I don't think that it is
15 typical to limit sports to live professional
16 and college team sports. I think that sports
17 is typically seen as a broader category than
18 that.

19 Q. Is non-team sports referenced anywhere
20 in these programming decisions?

21 A. No.

22 Q. Where would non-team sports fall
23 within these technical definitions?

24 A. If I didn't know, I would not be able
25 to guess.

1 Q. And what are non-team sports?

2 A. Everything from NASCAR racing to
3 Olympic Sports, to pro wrestling, MMA, tennis,
4 golf.

5 Q. Ms. Hamilton, are you familiar with
6 the Bortz survey?

7 A. Yes.

8 Q. When you were a cable operator do you
9 know if you were ever a respondent to the Bortz
10 survey?

11 A. I don't know if I was ever a
12 respondent to the Bortz survey. I know that I
13 have responded to similar surveys, if it wasn't
14 Bortz itself.

15 Q. Similar surveys in that they asked you
16 to evaluate distant signal programming?

17 A. It was some type of valuation of
18 broadcast. I imagine it might have been
19 distant signal; I don't know.

20 Q. All right. Based on your experience
21 working in the cable industry, do you think
22 respondents to the Bortz survey would
23 understand that live team sports was limited to
24 only include live sports telecast and would
25 also not lump in non-team sports when

1 evaluating it?

2 A. I think you would have to be a very
3 sophisticated executive, programming-focused
4 and experienced cable or television content
5 supplier to understand that definition. I
6 don't think it would be apparent to the person
7 who -- who hasn't been educated on the
8 specificity of that category.

9 Q. Do you believe the Bortz respondents
10 were sophisticated in this way?

11 A. No, I don't.

12 JUDGE STRICKLER: You find the
13 definition of Joint Sports Claimants, the
14 actual words being used, to be difficult to
15 understand? I am asking that, as opposed to
16 whether or not you can in one's mind as a cable
17 operator representative answering the survey
18 apportion value to professional and college
19 sports, team sports, versus other sports.

20 But you are -- taking the first part,
21 you find the actual language of the definition
22 of Joint Sports Claimants to be difficult for a
23 cable operator representative to understand?

24 THE WITNESS: Not the actual words,
25 no.

1 JUDGE STRICKLER: So what part of it
2 is difficult to understand?

3 THE WITNESS: I think that it is -- I
4 think there is a tendency to hear sports and
5 just think that that would encompass all
6 sports. I think reading and carefully parsing
7 the words, it's not difficult.

8 JUDGE BARNETT: You indicated that you
9 were aware of these category definitions for
10 purposes of this proceedings before this Board.
11 Is that generally true among -- was that
12 generally true among your peers, programming
13 executives at other cable systems, that they
14 understood that we have these category
15 definitions that might be slightly different
16 from what would be intuitive to them?

17 THE WITNESS: I don't believe it is.

18 BY MS. PLOVNICK:

19 Q. Let's just take one of the non-team
20 sports that you mentioned, NASCAR, as an
21 example. Do you think the respondents to the
22 Bortz survey would understand that NASCAR fell
23 into Syndicated Programming category?

24 A. I don't think they would, no.

25 Q. Do you think -- how about golf

1 tournaments? Do you think they would
2 understand where to place those?

3 A. No.

4 Q. Tennis matches?

5 A. No.

6 Q. How about professional wrestling?

7 A. No.

8 Q. As a CSO, would you consider these
9 types of programming that we just talked about
10 as sports programming?

11 A. Yes.

12 Q. As a CSO, would you understand that
13 these non-team sports I just mentioned fall
14 into Syndicated Programming categories?

15 A. No, that seems sort of nonsensical to
16 me, frankly.

17 Q. So is it fair to say that in your
18 opinion the cable operators who responded to
19 the Bortz survey would consider the categories
20 confusing?

21 A. The particular type of respondents I
22 think would find it very confusing, yes.

23 Q. Ms. Hamilton, are aware that
24 Mr. Singer and Mr. Hartman criticized your
25 testimony on this issue and contended that the

1 Bortz survey categories are not confusing?

2 A. I think if you look at their
3 testimony, they both say that a programming
4 executive or programming professional would not
5 find these categories confusing. And I think
6 Bortz respondents were not programming
7 professionals, with perhaps an exception or
8 two. But based on the listing of the
9 respondents that I saw, those people would not
10 be likely to understand that.

11 Q. We will come back to that in just a
12 minute. But I also want to talk with you a
13 little bit more about your Direct Testimony.
14 On page 12 of Exhibit 6008, you discuss the
15 concept of sports migration. What is sports
16 migration?

17 A. Sports migration is the movement of
18 sporting events off of broadcast and onto cable
19 networks, and now even onto other types of
20 platforms including over-the-top.

21 Q. So did sports migration, does it have
22 anything to do with distant signals?

23 A. Distant signals are affected, as all
24 broadcast networks are.

25 Q. And based on your experience in the

1 cable industry, in your opinion has the volume
2 of live team sports programming on distant
3 signals increased or decreased over time?

4 A. It's decreased.

5 Q. Do you expect that trend to continue?

6 A. Yes.

7 Q. Would you expect sports migration to
8 have an impact on the value of live team sports
9 programming on distant signals?

10 A. I would expect it to, yes.

11 JUDGE STRICKLER: So live team sports,
12 because of the migration to regional sports
13 networks and elsewhere, caused a loss of what
14 you might call -- and correct me if I am
15 wrong -- legacy carriage? Because it used to
16 be on distantly retransmitted stations and then
17 it migrated to something else, so it's no
18 longer a legacy of the distantly retransmitted.
19 It's gone in that regard?

20 THE WITNESS: If you are asking
21 whether that has resulted in the removal of
22 those channels, I don't know the answer to
23 that. It certainly has been a loss of the
24 content itself from the broadcast signals.

25 JUDGE STRICKLER: And because loss of

1 legacy carriage is important, would you expect
2 that people answering the Bortz survey or the
3 Horowitz survey would be aware of the loss of
4 that carriage on the distantly retransmitted
5 stations for purposes of answering the survey?

6 THE WITNESS: I wouldn't necessarily
7 think that that would occur to them. That's a
8 -- that's a fairly high-level observation.

9 JUDGE STRICKLER: Too esoteric in the
10 scheme of things?

11 THE WITNESS: I think so.

12 JUDGE STRICKLER: Thank you.

13 BY MS. PLOVNICK:

14 Q. And when we talk about programming,
15 you are talking about as a cable operator you
16 would select whole signals to carry; is that
17 correct?

18 A. That's correct.

19 Q. You would not make a selection of
20 individual programs and choose to carry just a
21 program; it would be a signal?

22 THE WITNESS: I wish that were
23 possible, but technologically it is just not --
24 and commercially, it is not possible.

25 JUDGE STRICKLER: You wish it was

1 possible to pick the programs a la carte from
2 the distant signal, rather than --

3 THE WITNESS: Correct. Correct.

4 JUDGE STRICKLER: And if you were to
5 do it that way, how would you prioritize which
6 programs to pick?

7 THE WITNESS: Viewership would be, I
8 think, the quintessential measurement. And
9 obviously the other factors. If I didn't have
10 to be concerned with bundling or legacy, I
11 think the other variable would be cost.

12 JUDGE STRICKLER: How about the
13 existence of niche programming that might
14 induce subscribership? Would that be important
15 to you?

16 THE WITNESS: I would certainly
17 consider it.

18 JUDGE STRICKLER: How important would
19 it be?

20 THE WITNESS: It's really
21 viewership-based, because the revenue that
22 comes from advertising is largely based on the
23 metric of how many people are watching.

24 JUDGE STRICKLER: So in this
25 alternative hypothetical universe we are

1 talking about where you would select a la
2 carte, the stations you're assuming the
3 capacity to sell advertising time?

4 THE WITNESS: That would certainly be
5 a factor. I would weigh matters differently if
6 there were no advertising available.

7 JUDGE STRICKLER: What if there was no
8 advertising available? How would you weigh it
9 differently?

10 THE WITNESS: I guess cost would be a
11 greater factor.

12 JUDGE STRICKLER: How about the niche
13 nature of the programming? Would that become
14 more important, less important, or no
15 difference if you had no advertising?

16 THE WITNESS: I think we would need to
17 adjust for capacity issues. If I had infinite
18 ability to add as much programming as I wanted,
19 of course I would love to satisfy every niche.
20 But in a world of limited bandwidth and limited
21 capacity, I would have to make choices based on
22 predictable viewership to satisfy the most
23 people and attract and retain the most
24 subscribers to continue to pay their
25 subscriptions so that I could have a profitable

1 business.

2 JUDGE STRICKLER: Thank you.

3 BY MS. PLOVNICK:

4 Q. On pages 13 to 15 of your Direct
5 Testimony, Exhibit 6008, you describe how CSOs
6 would value distant signal programming in your
7 view in an unregulated market without the
8 statutory license in place. So based on your
9 experience in the cable industry, can you
10 explain to the Judges how you think CSOs would
11 go about acquiring distant signals if the
12 statutory license no longer existed?

13 A. I believe that they would negotiate
14 with the licensees of the broadcast channels
15 themselves, who would have compiled the
16 programming to exhibit a linear channel.

17 Q. So cable operators would still choose
18 to carry entire signals?

19 A. I think, given today's technology,
20 they don't have much choice. They don't have
21 the ability to broadcast individual channels to
22 multiple locations.

23 Q. Why do you think CSOs operating in an
24 unregulated market would negotiate distant
25 signals with broadcast and not Copyright Owners

1 directly?

2 A. Efficiency and limitations of
3 technology.

4 Q. So where would the Copyright Owners
5 have their transaction in the hypothetical
6 market? Or would that be done before you as a
7 CSO would have your negotiation with the
8 broadcaster?

9 A. The Copyright holders of the --

10 Q. Of the content.

11 A. Of the content? I assume they would
12 be compensated by the broadcast network, by the
13 network.

14 Q. Ms. Hamilton, I want to turn your
15 attention to your Rebuttal Testimony, which is
16 Exhibit 6009. What were you asked to do in
17 your Rebuttal Testimony?

18 A. I was asked to review the Direct
19 Testimony of Alan Singer and Dan Hartman, and
20 to review the most recent iteration of the
21 Bortz survey.

22 Q. Let's turn to page 4 of Exhibit 6009.
23 Is that where you began talking about the Bortz
24 survey?

25 A. Yes.

1 Q. And for the record, do you know which
2 party in this case is sponsoring the Bortz
3 survey?

4 A. The Joint Sports Claimants.

5 Q. Now, you had some criticisms of the
6 Bortz survey. Can you please explain what
7 those are?

8 A. I think that they have the wrong
9 respondents. I think that the way that they
10 asked the operators to assign value is just
11 inconsistent with the way that a decision-maker
12 would actually make that decision. I think it
13 is so confusing as to invite overvaluing of the
14 sports programming.

15 Q. So did you make a demonstrative slide
16 to help summarize these criticisms?

17 A. Yes.

18 MS. PLOVNICK: Albina, could you show
19 us, please, Slide Number2.

20 BY MS. PLOVNICK:

21 Q. And is this -- is this the slide that
22 you were just speaking about?

23 A. Yes.

24 Q. All right. So I want to talk about
25 these different factors that you've got here.

1 The first one is "Bortz surveyed the wrong
2 respondents." Why do you say that?

3 A. I think I -- as I mentioned a moment
4 ago, by calling people in cable systems, which
5 are people operating locally the actual cable
6 plant at the head end that sends the signals
7 out to customers, those are not people who
8 really have the ultimate authority, certainly,
9 over what content is chosen. But in many
10 cases, I think, really have no -- no
11 understanding of what the dynamic is for even
12 choosing the programming.

13 Q. Let's take a look at pages 5 to 6 of
14 your Rebuttal Testimony, which is Exhibit 6009.
15 All right.

16 MS. PLOVNICK: Go back one page,
17 Albina, to page 5.

18 BY MS. PLOVNICK:

19 Q. So you see a chart there on page 5;
20 correct?

21 A. Yes.

22 Q. And is that chart taken from the Bortz
23 report?

24 A. Yes, it is.

25 Q. And so looking at this chart, how many

1 of the Bortz respondents each year had
2 marketing-related titles?

3 A. Close to half, as I recall, in some
4 years -- most years.

5 Q. In your opinion would a marketing
6 professional be in a position to answer the
7 valuation questions presented by the Bortz
8 survey?

9 A. Not in my experience, no.

10 Q. Why not?

11 A. They have a very different set of
12 responsibilities. They were there to market
13 the cable services and telephone and Internet
14 services to consumers and they would not have
15 had any influence over what programming would
16 be included in a video lineup.

17 Q. Would marketing professionals have had
18 a programming budget?

19 A. No.

20 Q. Would marketing professionals have had
21 a marketing budget?

22 A. Yes.

23 Q. All right. So let's turn to your
24 second category of criticism.

25 JUDGE STRICKLER: Before you do, just

1 sticking with that one. You have a table, the
2 table is right up there on the screen. One of
3 the categories of job titles, about one, two,
4 three, four, five down is vice
5 president/director/manager of programming. Do
6 you see that?

7 THE WITNESS: Yes, I do.

8 JUDGE STRICKLER: In your experience,
9 was it typical for someone to have one of those
10 titles at a CSO?

11 THE WITNESS: No, not typical.

12 JUDGE STRICKLER: So who would
13 handle -- what would be the title, I should
14 say, of the person who was responsible for
15 making programming decisions?

16 THE WITNESS: The programming
17 decisions are not made at the local level.

18 JUDGE STRICKLER: So none of these job
19 titles would be particularly germane, given
20 that this is the wrong level? Is that what you
21 are saying?

22 THE WITNESS: That's correct.

23 JUDGE STRICKLER: It would be made at
24 a higher-up management level?

25 THE WITNESS: Yes.

1 JUDGE STRICKLER: What management
2 level is that?

3 THE WITNESS: That is a centralized
4 corporate level; the programming group in the
5 parent.

6 JUDGE STRICKLER: Would that be an
7 MSO?

8 THE WITNESS: Yes.

9 JUDGE STRICKLER: What would the title
10 be of that person?

11 THE WITNESS: Executive vice president
12 of programming, in my case.

13 JUDGE STRICKLER: Thank you.

14 BY MS. PLOVNICK:

15 Q. Now I'm going to move on to your next
16 criticism that, "The Bortz valuation question
17 is inconsistent with how CSOs make programming
18 decisions." What do you mean by the second
19 criticism?

20 A. I think this sort of forced sum
21 approach is just -- it's a very artificial
22 construct. I think the idea that you can go
23 out and cherry-pick programming and assign
24 arbitrary values is not all that useful,
25 frankly, in terms of choosing -- choosing what

1 programming value is.

2 I mean, if I'm an individual, I have
3 my own personal preferences and I can tell you
4 what I think is the best programming out there,
5 the most valuable, and it may not resemble
6 viewing behavior at all. I may even be trying
7 to use my best instincts to guess what people
8 might want to watch and put a value onto
9 programming using that. But it's all fairly --
10 extremely subjective.

11 Q. When you say inconsistent with how
12 CSOs make programming decisions, does that have
13 to do at all with the importation of the whole
14 signal versus category?

15 A. Clearly, we could only transmit linear
16 signals, not individual programming.

17 JUDGE STRICKLER: Given your reliance,
18 as you say in your testimony, on viewing, was
19 it your regular practice to obtain Nielsen
20 viewing data for distantly retransmitted
21 stations?

22 THE WITNESS: I can't say that I got
23 Nielsens for distant signals, no.

24 JUDGE STRICKLER: How did you know if
25 the shows were being viewed?

1 THE WITNESS: That was really the
2 force of inertia more than anything else. Once
3 a signal was on, it stayed on. And we did not
4 add a lot of signals. They just were already
5 in place and, typically, we just didn't take
6 them off.

7 But it was -- it was rare to add a
8 signal. I was lobbied to add signals. And in
9 the case of a general manager coming to me and
10 asking for it, we would -- we would consider
11 that and we would add it.

12 JUDGE STRICKLER: While I have your
13 attention, going back to my previous question
14 and you said that the decision about
15 programming would be made at the MSO level,
16 rather than the CSO level. Does that mean that
17 if someone was answering this survey was
18 appropriate to the task at this higher
19 corporate level, they would have to answer on
20 behalf of a number of systems rather than just
21 one system?

22 THE WITNESS: Yes.

23 JUDGE STRICKLER: And you think they
24 would be equipped to be able to do that,
25 because they were the ones who are making the

1 decisions as they applied to all the, if you
2 will, subsidiary cable systems?

3 THE WITNESS: Yes, if I understand
4 your question correctly, they would be
5 answering globally.

6 JUDGE STRICKLER: Thank you.

7 BY MS. PLOVNICK:

8 Q. Now, your third category of criticism
9 with regard to potential overvaluing of JSC
10 programming, your third point on the
11 demonstrative, can you explain why you think
12 this is an issue?

13 A. Well, in reviewing the way the
14 questions were being asked, or the construct of
15 assigning a value to different categories, I
16 think it's very confusing to a layperson
17 effectively who is answering this question who
18 isn't a programming professional, to understand
19 where non-live team sports would go. Non-live
20 non-team sports.

21 Q. So why would not being able to know
22 where non-team sports goes, why would that be
23 important?

24 A. Because I think that the knee-jerk
25 tendency is to say sports are sports. And I

1 think sports are important. I'm a sports fan
2 myself, therefore, I'm going to assign a value
3 because we all know that sports are the only
4 thing that matters these days as live
5 programming.

6 And I think that it is -- it's just --
7 there is no bucket for anything other than the
8 JSC category. But I think that the tendency
9 would be to just put it all into that same
10 category.

11 Q. So in your opinion, Bortz respondents
12 would have included non-team sports in their
13 valuations for the live team sports category?

14 A. I think without having actual language
15 in front of them to study, absolutely.

16 Q. So program volume information, I think
17 in your testimony you mentioned that as a
18 factor -- in your written testimony. Would
19 this have had an impact at all on the valuation
20 of the categories in the Bortz survey?

21 A. I think that would be an extremely
22 important factor.

23 Q. And now let's just talk about a CSO's
24 budget for sports programming. What percentage
25 of a CSO's programming budget would, in your

1 experience, typically be devoted to the
2 acquisition of sports programming across the
3 board, all sports programming?

4 A. I think that in my testimony I say
5 35 percent. I think 35 percent at a minimum.

6 Q. So and that would include sports on
7 cable networks like ESPN and regional sports
8 networks?

9 A. That's correct.

10 JUDGE STRICKLER: I have a question
11 for you. I understand your comment about the
12 confusion someone might have with regard to
13 where to place certain types of sports, given
14 these definitions. With regard to the category
15 of Program Suppliers, which includes syndicated
16 programming? And syndicated programming -- and
17 correct me if I am wrong -- includes,
18 typically, reruns of popular television shows
19 that had aired originally on network stations.
20 Seinfeld, that type of show. Friends, that
21 type of show.

22 Do you have an opinion as to whether
23 or not people who would respond to the survey
24 would be able to distinguish the value of a
25 Seinfeld or a Friends, or what have you, on a

1 distantly retransmitted station versus the same
2 rerun on a local station when answering the
3 survey?

4 THE WITNESS: I don't think they
5 would, no.

6 JUDGE STRICKLER: So their valuation
7 -- well, okay, thank you.

8 BY MS. PLOVNICK:

9 Q. So I was going to ask -- you said 35
10 to 40 percent of your budget was all sports
11 programming, including cable networks?

12 A. I think 35 percent, but I think
13 40 percent is fair.

14 Q. What amount of that budget would be
15 devoted to sports programming on distant
16 signals?

17 A. A very tiny, tiny percentage.

18 Q. So in your opinion, all of the
19 different criticisms that we have been talking
20 about, do you think they affect the reliability
21 of the Bortz survey?

22 A. Yes, I do.

23 Q. Did you also review the Horowitz
24 survey in connection with preparing your
25 Rebuttal Testimony?

1 A. Yes.

2 Q. Do you know what party in this
3 proceeding is sponsoring the Horowitz survey?

4 A. The Program Suppliers.

5 Q. What did you think of the Horowitz
6 survey?

7 A. I thought it was an improvement over
8 the Bortz survey.

9 Q. And why did you think it was an
10 improvement?

11 A. I think they attempted to give more
12 information to -- first of all, I think it
13 appears that they chose better, more reliable
14 respondents, having given acknowledgment of
15 consolidation and the tendency of the decisions
16 to be made at a higher level. And it appeared
17 to me -- well, it was difficult to tell based
18 on the listing, but it appeared to me that they
19 were focusing more on the corporate level
20 respondent.

21 They also gave examples of the
22 programming and they created a category for
23 non-team sports, which I think broke out the
24 Program Suppliers Sports in a more accurate
25 way.

1 Q. Based on your experience in the
2 industry, do you think the Horowitz survey or
3 the Bortz survey provides a better indication
4 of how CSOs value the different program
5 categories at issue in this proceeding?

6 A. I think the Horowitz survey is a
7 better survey.

8 Q. Now I want to turn to -- Program
9 Suppliers also asked you to review the direct
10 testimonies of JSC witnesses Alan Singer and
11 Daniel Hartman in connection with your Rebuttal
12 Testimony. Did you review those testimonies?

13 A. Yes.

14 JUDGE STRICKLER: Just before you do
15 that, Counsel asked you a moment ago which was
16 more accurate in your opinion, the Horowitz
17 survey or the Bortz survey, and your response
18 was the Horowitz survey was better than the
19 Bortz survey. Do you think it was accurate in
20 any way?

21 THE WITNESS: I think it is more
22 accurate, yes.

23 JUDGE STRICKLER: Does it measure
24 viewing in any way?

25 THE WITNESS: It does not measure

1 viewing in any way.

2 JUDGE STRICKLER: So you think that a
3 survey that doesn't measure viewing in any way
4 at all can still be somewhat accurate?

5 THE WITNESS: I think it can be
6 informative.

7 JUDGE STRICKLER: Is it informative of
8 value in this proceeding, in your opinion?

9 THE WITNESS: I think viewership is
10 always preferable -- the actual behavior is
11 preferable to subjective opinion.

12 JUDGE STRICKLER: I understand your
13 ranking of what you think is better evidence,
14 but do you think that the Horowitz survey is
15 evidence of value in this proceeding?

16 THE WITNESS: It is directionally
17 useful.

18 JUDGE STRICKLER: What do you mean by
19 "directionally useful" in this context?

20 THE WITNESS: I think that it is -- I
21 think it's helpful to see the relative value
22 assigned by individuals. I don't know if these
23 respondents would have more or any ability to
24 place value in a way that is more useful than
25 actual viewership. I would also prefer to use

1 behavior over opinion.

2 JUDGE STRICKLER: Would you advise us
3 to rely on the Horowitz survey at all in our
4 measurement of value in this proceeding?

5 THE WITNESS: Again, I think it's
6 informative. I don't know if relying on it
7 would be my preference, no.

8 JUDGE STRICKLER: So you would advise
9 us to inform ourselves --

10 THE WITNESS: Yes.

11 JUDGE STRICKLER: -- of value by
12 consideration of the Horowitz survey?

13 THE WITNESS: Yes.

14 JUDGE STRICKLER: But not the Bortz
15 survey?

16 THE WITNESS: Yes, I think that's
17 accurate. I question the validity because of
18 the quality of the respondents.

19 JUDGE STRICKLER: Thank you.

20 BY MS. PLOVNICK:

21 Q. Now, returning to Singer and Hartman,
22 do you know Mr. Singer and Mr. Hartman?

23 A. Yes, I know both of them.

24 Q. How do you know them?

25 A. I worked with and on the other side of

1 the table from each of them over the last -- in
2 the case of Alan Singer, 20 years, and in the
3 case of Dan Hartman, somewhere between 10 and
4 15.

5 Q. Did you agree with Mr. Singer and
6 Mr. Hartman's testimony regarding the value of
7 distant sports programming to cable system
8 operator?

9 A. No, I didn't.

10 Q. Why not?

11 A. In looking at their testimony, I think
12 each of them just, speaking to the value of
13 sports programming writ large generally, is
14 talking about how live sporting events are so
15 important. And I don't think that they are
16 actually recognizing both the limited volume
17 and the, almost by definition, lower quality of
18 the live college and pro sports that are
19 available on distant signals. By definition,
20 those are out-of-market games that haven't been
21 picked up by cable.

22 Q. Program Suppliers also asked you to
23 review the Direct Testimony of Dr. Gregory
24 Crawford. Did you review that testimony?

25 A. Yes, I did.

1 Q. And to your knowledge, does
2 Dr. Crawford have experience working as a cable
3 operator?

4 A. I don't believe he does.

5 Q. So did you review the section of
6 Dr. Crawford's testimony that addresses his
7 non-duplicate minute analysis?

8 A. Yes, I did.

9 Q. Do you believe that Dr. Crawford
10 relies on any assumptions in that analysis?

11 A. I think he says that he just assumes
12 that any duplicated programming would have the
13 value of zero to a cable operator.

14 Q. So Ms. Hamilton, do you agree with
15 Dr. Crawford's assumption?

16 A. I disagree with it.

17 Q. Why?

18 A. I think all content has value greater
19 than zero, whether it is duplicated or not. I
20 think that whether it is on two different
21 channels simultaneously or whether it is time
22 shifted and available one time and subsequently
23 available, in any case it has some value.

24 You could have two different people in
25 a household watching two different channels at

1 the same time. If it is simultaneously
2 transmitted, if it is time shifted and a viewer
3 sees it on one channel but missed the beginning
4 and wants to start over and sees that it is
5 available later, of course it has value.

6 Q. Thank you, Ms. Hamilton. I have no
7 further questions on direct.

8 JUDGE BARNETT: This is an opportunity
9 for a morning recess. 15 minutes.

10 (A recess was taken at 10:29 a.m.,
11 after which the trial resumed at 10:49 a.m.)

12 JUDGE BARNETT: Mr. Garrett.

13 MR. GARRETT: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. GARRETT:

16 Q. Ms. Hamilton, I am Bob Garrett, and I
17 represent the Joint Sports Claimants in this
18 proceeding. Good morning.

19 A. How do you do?

20 Q. You began with Charter in 2003; is
21 that right?

22 A. Yes, that's correct.

23 Q. And you left in early 2007; correct?

24 A. Yes.

25 Q. And following that time, you became a

1 consultant in the media industry; correct?

2 A. Yes.

3 Q. Subsequent to leaving Charter in 2007,
4 did you act as an employee of any cable system
5 operator?

6 A. I don't believe so, no.

7 Q. Which cable system or multiple system
8 operators did you advise following 2007?

9 A. Some I am not at liberty to disclose.
10 So Dish Network is certainly one that I've
11 already mentioned.

12 Q. A satellite carrier?

13 A. Yes.

14 Q. Are you familiar with Desser Sports
15 Media?

16 A. Yes.

17 Q. Can you describe what Desser Sports
18 Media is?

19 A. Desser Sports Media is a sports
20 focused consultancy. Ed Desser is the
21 principal and founder of that.

22 Q. Are you affiliated with Desser Media
23 in any way?

24 A. I've certainly worked with Ed Desser,
25 yes.

1 Q. Are you aware that your bio is on
2 their website?

3 A. I wasn't aware of that, but it doesn't
4 shock me.

5 Q. Have you advised any sports teams or
6 leagues since leaving Charter in 2007?

7 A. Yes, I have.

8 Q. Which ones have you advised?

9 A. Again, I'm not able to disclose -- I'm
10 not sure if I'm able to disclose any of them,
11 to be honest. I would need to look at my
12 consulting agreements with each of them. It is
13 not uncommon for them to prefer that I remain
14 on the sidelines, as it were.

15 JUDGE STRICKLER: Can you mention --
16 can you state how many you represented during
17 that time period?

18 THE WITNESS: Five or six, I guess.

19 JUDGE STRICKLER: And these are
20 professional sports leagues or --

21 THE WITNESS: Teams. And one league.

22 JUDGE STRICKLER: Teams and leagues.
23 Thank you.

24 BY MR. GARRETT:

25 Q. You mentioned Ed Desser a moment ago;

1 correct?

2 A. Yes.

3 Q. Who is Ed Desser?

4 A. Ed Desser is someone who I met during
5 his time at NBA Network -- or at the NBA. He
6 was one of the founders of NBA Network, and he
7 was negotiating for carriage on Charter.

8 Q. Were you aware that Mr. Desser was a
9 witness for the Joint Sports Claimants in the
10 2004-'05 decision?

11 A. I believe he mentioned that, yes.

12 Q. Did you consult with Mr. Desser?

13 A. I didn't work on that. I had no -- no
14 association with that whatsoever.

15 Q. Did you review his testimony in the
16 2004-'05 proceeding?

17 A. I did not.

18 MR. GARRETT: Geoff, I'm going to ask
19 you to call up Exhibit 1059.

20 BY MR. GARRETT:

21 Q. Ms. Hamilton, this is the written
22 Rebuttal Testimony of Mr. Desser in the
23 2004-'05 proceeding. And I'd ask you to turn
24 -- it should be in your binder as the first
25 tab.

1 A. Volume I, or -- is it Volume II, Part
2 1, Part 2?

3 Q. This is Volume II, Part 1.

4 A. Okay.

5 Q. But there is no Part 2.

6 A. Okay. Got it.

7 Q. We do this just to confuse the
8 witnesses.

9 A. You've succeeded.

10 Q. All right. Go to page 4, paragraph 8,
11 please.

12 A. Yes.

13 Q. I'll represent that Dr. Desser
14 testified about the reasons why the Program
15 Suppliers' viewing study in that proceeding as
16 offered by Dr. Ford did not capture the value
17 of sports programming. And if we look here at
18 paragraph A, you see he says that, "Ford's
19 model does not account for other types of value
20 attributable to sports programming in my
21 experience." Do you see that?

22 A. Yes.

23 Q. And he goes on to refer to additional
24 elements of value include commercial value,
25 prestige, packaging, audience flow, risk,

1 differentiation, driving distribution, and the
2 need to differentiate a characteristic sports
3 program, among others. Do you see that?

4 A. I do.

5 Q. Are those terms with which you are
6 familiar?

7 A. Certainly I understand them, yes.

8 Q. And do you use those in advising your
9 sports clients concerning the value of their
10 programming?

11 A. I don't know that I've ever used them.

12 Q. He concludes this paragraph by saying,
13 "This is why sports are often a loss leader for
14 a network." Do you see that?

15 A. Yes.

16 Q. Are you familiar with the term loss
17 leader for a network?

18 A. Yes.

19 Q. Can you explain what a loss leader is?

20 A. Something that costs more than the
21 value that it actually recovers or generates.

22 Q. All right. So I'll use as an example,
23 you are aware that Fox and the NFL recently
24 entered into a deal covering Thursday Night
25 Football; correct?

1 A. Yes.

2 Q. And that deal covers the next
3 five years of Thursday Night Football; correct?

4 A. I believe so.

5 Q. And gets them about 11 Thursday night
6 games per year; correct?

7 A. I don't know.

8 Q. Do you know how much Fox paid for
9 those rights?

10 A. Several billion.

11 MR. GARRETT: Geoff, could you just
12 put up on the screen the Wall Street Journal
13 article.

14 BY MR. GARRETT:

15 Q. It's not an exhibit and I'm not
16 offering it as an exhibit, but I'd like to just
17 go down to under "the terms of its new NFL
18 agreement."

19 A. I'm sorry; that font is so small --

20 MS. PLOVNICK: You Honor, we would
21 object to something that is not an exhibit, and
22 has not being offered as an exhibit, being read
23 into the record.

24 JUDGE BARNETT: Mr. Garrett?

25 MR. GARRETT: It's impeachment. I

1 don't have to offer it as an exhibit to impeach
2 testimony.

3 JUDGE BARNETT: That's correct. What
4 is it that you are impeaching?

5 MR. GARRETT: Testimony about the loss
6 leaders and the NFL package.

7 MS. PLOVNICK: Your Honor --

8 JUDGE BARNETT: I don't think she said
9 anything that about -- that would be impeached
10 with what I am looking at right now. She said
11 several billion or several million or
12 something. I'd have to check to see if it was
13 an M or a B.

14 JUDGE FEDER: B.

15 JUDGE BARNETT: Thank you.

16 JUDGE FEDER: 660 million times
17 five years is several billion dollars.

18 JUDGE BARNETT: Sustained.

19 MR. GARRETT: Okay.

20 BY MR. GARRETT:

21 Q. Ms. Hamilton, let me just ask you
22 about your testimony at page 5 to 6 of your
23 written Rebuttal Testimony. Do you have that?

24 A. Of my rebuttal?

25 Q. Yes, ma'am.

1 A. Just a moment. I'm sorry; which
2 pages?

3 Q. 5 to 6.

4 A. Got it.

5 Q. You testify on these pages, as you did
6 earlier this morning, that the Bortz survey
7 reached a large number of respondents that had
8 job titles associated with marketing rather
9 than programming or senior management; correct?

10 A. That's correct.

11 Q. And that you thought was a problem
12 because marketing individuals would not have
13 knowledge of program valuations; correct?

14 A. That's one problem, yes.

15 Q. Did you review the Horowitz survey?

16 A. I did.

17 Q. And it's true, also, that the Horowitz
18 survey reached a number of respondents who had
19 marketing titles; correct?

20 A. I believe so, yes.

21 Q. Horowitz said he sought to improve
22 upon the Bortz survey; correct?

23 A. That's the testimony, yes.

24 MR. GARRETT: If we go, Geoff, to
25 Exhibit 6012, which is Mr. Horowitz's

1 testimony, Appendix A.

2 BY MR. GARRETT:

3 Q. Did you review the survey that
4 Mr. Horowitz used?

5 A. Yes.

6 Q. We see in the introduction: If the
7 person named on the sample is not available,
8 ask to speak with a general manager,
9 programming director, or the marketing
10 director. Do you see that?

11 A. Yes. I'm sorry; this is back in the
12 actual exhibit, it's the survey itself?

13 Q. 23, of Exhibit 6012.

14 A. Is that page 23?

15 Q. Yes, ma'am.

16 A. Got it. Yes.

17 Q. So it's Mr. Horowitz's judgment that a
18 marketing director would be qualified to answer
19 the questions in his survey; correct? Or could
20 be qualified?

21 A. That appears to be the case.

22 Q. And if we go over to Tables 8-1 --
23 beginning at Tables 8-1, 8-4, have you seen
24 this table before?

25 A. Yes.

1 Q. And there are, in fact, a number of
2 individual respondents who had marketing titles
3 in the Horowitz survey; correct?

4 A. Yes.

5 Q. The criticism that the Bortz survey
6 reached respondents who had marketing titles is
7 a criticism that has been leveled against prior
8 versions of the Bortz survey; correct?

9 A. I don't know.

10 Q. Do you know whether -- you offered
11 several criticisms here of the Bortz survey.
12 Do you know whether any of them has been
13 offered in prior proceedings concerning the
14 Bortz studies?

15 A. I don't know.

16 JUDGE STRICKLER: Excuse me, Counsel,
17 I just want to follow up. I think Counsel
18 referred you to page 5 of your written Direct
19 Testimony. At the top, the paragraph that
20 spills over from the previous page, page 5 --

21 THE WITNESS: I believe he was
22 referring me to the rebuttal.

23 JUDGE STRICKLER: I'm going to refer
24 you to the direct. I apologize for getting
25 that wrong. Top of page 5, you say -- this is

1 consistent to what you testified a moment ago.
2 You said, quote, "Virtually all major MSOs had
3 a centralized hierarchy in place requiring
4 senior level management to approve channel
5 lineups for all cable systems within the MSO,
6 regardless of geography."

7 THE WITNESS: Right.

8 JUDGE STRICKLER: So was the senior
9 level management called upon to approve what
10 was proposed as a channel lineup by the CSO?
11 So the CSO made the first cut at it, but it
12 couldn't be finalized until the MSO at the
13 higher level made the decision?

14 THE WITNESS: There is certainly some
15 bottom-up influence or request. Usually, it
16 wouldn't necessarily be at the system level.

17 JUDGE STRICKLER: By system level, you
18 mean CSO; right?

19 THE WITNESS: Well, CSO is not a term
20 that I'm familiar with until coming to this
21 proceeding, to be honest with you. The
22 systems -- there are hundreds of systems, for
23 example, at Charter. And they all feed up into
24 a sort of regional management level. And those
25 four or five regions, however, many they have

1 these days, then report into a corporate
2 programming group.

3 JUDGE STRICKLER: And that's the MSO
4 to which you are referring?

5 THE WITNESS: Yes.

6 JUDGE STRICKLER: So would the MSO
7 ever, at its highest level, ever initiate the
8 channel lineup decision or would they wait for
9 it to sort of percolate up from the bottom?

10 THE WITNESS: It would go -- it could
11 go either direction. It could be top down. If
12 I need to fill a subscriber commitment that I
13 have to a network or set of networks, I may
14 require that that network be launched on given
15 systems.

16 JUDGE STRICKLER: How about with
17 regard to distantly retransmitted stations?
18 Would that percolate up from the lower level to
19 be approved by the MSO at the highest level, or
20 would that also be a decision that was made at
21 the highest level?

22 THE WITNESS: Certainly, there just
23 wasn't very much active decision-making about
24 distant signals. There just tended to be this
25 perpetuation of what was already carried. It

1 was rare to -- in my experience, to have a
2 request to add a distant signal. So it
3 certainly would have been something that a
4 local system might have requested, but it just
5 didn't happen --

6 JUDGE STRICKLER: Thank you.

7 THE WITNESS: -- very often.

8 BY MR. GARRETT:

9 Q. Just to follow up on that, could you
10 go to 1150?

11 A. I'm sorry, 1150 in your binder?

12 Q. Yes, ma'am.

13 A. Okay. Got it.

14 Q. Do you recognize this document,
15 Ms. Hamilton?

16 A. I do not recognize this document.

17 Q. Do you have familiarity with the
18 Statement of Account forms in your position at
19 Charter or your subsequent consulting
20 assignments?

21 A. No.

22 Q. Well, I will just represent to you
23 that this is a Statement of Account that was
24 filed for the period January 1st through
25 June 30, 2010, by the Charter system that

1 served -- if you go to the second page of this
2 -- Scottsbluff, Nebraska. So are you familiar
3 with the cable system Charter system in
4 Scottsbluff, Nebraska?

5 A. Not personally, no. Though I'm
6 certain it was probably a cable system when I
7 was head of programming.

8 Q. Okay. Let me just go to page 3, page
9 G?

10 MS. PLOVNICK: Your Honor, we would
11 object to this, because this exhibit is not yet
12 in evidence and the witness has said she is not
13 familiar with it. And it was actually dated
14 after she was no longer working at Charter. So
15 we would object to it being read into the
16 record without it being admitted and we would
17 object to its admission.

18 JUDGE BARNETT: Mr. Garrett?

19 MR. GARRETT: I'm using it for
20 illustrative purposes. There have been
21 questions here about exactly how the process
22 works with respect to distant signals. This is
23 a Statement of Account. It has specific
24 distant signals with a specific Charter system
25 which she said she thought had existed when she

1 was there at Charter. And I am simply trying
2 to use the Statement of Account to establish
3 the facts of carriage. And then the next line
4 of questioning would be about the
5 decision-making process concerning those
6 distant signals.

7 JUDGE BARNETT: Has it been marked?

8 MR. GARRETT: It had been marked. It
9 has been filed. We have not yet moved it into
10 admission.

11 JUDGE BARNETT: Before we get
12 testimony about the contents of this document,
13 it probably should be offered into evidence.

14 MR. GARRETT: Well, then, I would
15 offer it into evidence as a publicly filed
16 Statement of Account of a Charter system, and
17 she worked for Charter.

18 MS. PLOVNICK: We would object that it
19 has no sponsoring witness and Ms. Hamilton has
20 not been able to authenticate the document and
21 it covers a period of time that she did not
22 work at Charter.

23 JUDGE BARNETT: We can take official
24 notice of this as a document that's filed with
25 the Copyright Office. What -- the number is?

1 MR. GARRETT: 1150, your Honor.

2 JUDGE BARNETT: 1150 is admitted.

3 (Exhibit Number 1150 was marked and
4 received into evidence.)

5 BY MR. GARRETT:

6 Q. So we are on page 3 of 1150,

7 Ms. Hamilton. Do you see that?

8 A. Yes. Page 3 as listed on top or the
9 third page of the exhibit?

10 Q. At the top of page 3, it's space G.

11 A. Okay.

12 Q. And just go to the next page, too. So
13 this is a system that had two different channel
14 lineups. On the next page, the topmost screen
15 channel lineup B and we go back to channel
16 lineup A on the preceding page. Do you see
17 that? So incidentally, this particular system
18 did not carry WGN, did it?

19 A. I don't know.

20 Q. If all of the signals that were
21 broadcast signals that were retransmitted
22 during this particular accounting period are
23 required to be listed here in space G, we don't
24 see any listing of WGN, do we?

25 A. I have no idea what these listings

1 are. I've never seen a form like this in my
2 life.

3 Q. Were you familiar with this particular
4 system when you were a programming director at
5 Charter?

6 A. Not specifically.

7 Q. If I represent to you that this
8 particular system carried several different
9 distant signals, can you tell me what, if any,
10 role you had in choosing those signals?

11 A. I wouldn't be able to tell you. This
12 was 2010. I would have been gone since
13 beginning of 2007.

14 Q. Assume that they had the same channel
15 lineup in 2005, would you have played any role
16 in choosing the signals for this particular
17 system?

18 A. I may have signed off on an approval
19 at the corporate level. I got voluminous
20 printouts of channel changes that were vetted
21 by people who were on my staff.

22 Q. And those approval requests would have
23 originated where?

24 A. Could have been at the regional level;
25 could have been at our system level. It could

1 have -- I really couldn't say. I have no idea.

2 Q. All right. There is a reference here
3 to KWGN. Are you familiar with that signal?

4 A. No.

5 Q. From Denver, Colorado?

6 A. Yes, I understand.

7 Q. Do you recognize that it was a Tribune
8 station?

9 A. Not off the top of my head, but it
10 certainly would stand to reason.

11 Q. So is it fair to say that you would
12 not really be able to tell me much of anything
13 about any of these distant signals on this
14 Scottsbluff, Nebraska?

15 A. That's correct.

16 Q. And individuals who would have
17 personal knowledge of the reasons why the
18 system was carrying particular distant signals,
19 where would I find them?

20 MS. PLOVNICK: Objection. This is not
21 even the time period Ms. Hamilton was working
22 at Charter. It calls for speculation.

23 BY MR. GARRETT:

24 Q. Well, assume that it was the 2004
25 through 2007, when you actually worked at

1 Charter. Okay?

2 JUDGE BARNETT: And the question is?

3 BY MR. GARRETT:

4 Q. Who at Charter would be most familiar
5 with the programming carriage decisions
6 involving carriage of these particular distant
7 signals?

8 MS. PLOVNICK: Your Honor, this is a
9 2010 Statement of Account. It is not from 2004
10 to 2007. So we have no idea who made decisions
11 about distant signal carriage.

12 JUDGE BARNETT: Sustained. Rephrase
13 the question, Mr. Garrett. She hasn't verified
14 that she is familiar with this or that any of
15 these signals were carried during the time she
16 was employed.

17 BY MR. GARRETT:

18 Q. Let me ask you a hypothetical,
19 Ms. Hamilton. Assume that in 2005, when you
20 were at Charter, the system in Scottsbluff,
21 Nebraska, carried five different distant
22 signals -- seven distant signals. Okay? If I
23 wanted to know why the system was carrying
24 those signals, who would I go to at Charter to
25 ask?

1 A. Why they were carried?

2 Q. Yes.

3 A. I honestly have no idea. I don't know
4 that that is a question that would typically be
5 asked. I think that there could be a different
6 reason for each one of the signals. And -- but
7 I really couldn't say.

8 Q. Well, who would have -- staying with
9 my hypothetical, who would have the best sense
10 of the relative values of the different types
11 of distant signals being carried?

12 A. I assume a subscriber or a viewer.

13 Q. Okay. Who at Charter would have the
14 best sense of the relative value of those
15 signals?

16 A. Someone who watches the channels.

17 Q. All right. You also testified here
18 that various Bortz respondents would not
19 understand sports programming was limited only
20 to live sports; do you recall that?

21 A. Yes.

22 Q. And that they would consider other
23 sport activities, such as golf, tennis, NASCAR,
24 and Olympics, as falling within sports;
25 correct?

1 A. Yes.

2 Q. Have you done any analysis to
3 determine how much of these other sports were
4 actually on distant signal on a non-network
5 basis from the 2010 to 2013?

6 A. No.

7 Q. Can you name any distant signals
8 carried by cable operators in 2010 to 2013 that
9 carried golf on a non-network basis?

10 A. I can't. I haven't done the analysis.

11 Q. Okay. You also talked about the small
12 value of sports programming on distant signals.
13 Do you recall that?

14 A. Yes.

15 Q. Again, have you done any analysis to
16 determine how much sports programming was on
17 distant signals in 2010 through 2013?

18 A. Not personally.

19 Q. And you relied upon Dr. Gray for the
20 numbers that you put in your testimony?

21 A. That's correct.

22 Q. Have you seen the criticisms that have
23 been leveled against those particular numbers?

24 A. I don't know that I have.

25 Q. Do you know how those numbers were

1 calculated?

2 A. No.

3 MR. GARRETT: Let me ask you to put
4 up, Geoff, the Israel written Rebuttal
5 Testimony, Table 5.

6 BY MR. GARRETT:

7 Q. Did you review the Israel Rebuttal
8 Testimony?

9 A. No.

10 Q. So you haven't seen these numbers here
11 before either?

12 A. No.

13 Q. I'm sorry?

14 A. I have not seen these numbers.

15 Q. And you don't know how they relate to
16 Dr. Gray's testimony, do you?

17 A. I do not.

18 Q. Assume for a moment that Table 5 shows
19 that the amount of sports programming on
20 distant signals was 4.5 percent in 2004-'05 and
21 5.9 percent in 2010-'13, do you see that?

22 A. I see that.

23 Q. You have nothing to dispute that, do
24 you?

25 MS. PLOVNICK: Your Honor, I would

1 object as mischaracterization. This is
2 weighted by the subscriber and he has not
3 disclosed that to the witness.

4 Mischaracterization.

5 MR. GARRETT: It is right on the
6 screen, your Honor, that it is weighted by
7 subscribers.

8 JUDGE BARNETT: Overruled.

9 BY MR. GARRETT:

10 Q. And also this particular exhibit shows
11 that the Program Suppliers' share of -- I'm
12 sorry; the volume of programming declined
13 during that period 2004-'05 to 2010-'13, by
14 51 percent to 33.3 percent. Do you see that?

15 A. I see that.

16 Q. Is it your testimony that the volume
17 numbers referred -- the various volume numbers
18 should be taken into account here in
19 determining relative market value?

20 A. It would stand to reason.

21 Q. Would it stand to reason, then, that
22 Program Suppliers' shares should decline
23 commensurate with its decline in volume over
24 this period?

25 A. This is really not my area of

1 expertise.

2 Q. But you did criticize the Bortz survey
3 for not giving information about volume;
4 correct?

5 A. The volume is still small, I think
6 it's important to note. I can't speak to the
7 relative shifts and how they're calculated and
8 whether they should or should not be weighted
9 by subscriber. It's not something that I am an
10 expert in.

11 MR. GARRETT: Geoff, let me ask you
12 put up the written direct -- I'm sorry the
13 Bortz report, 1001.

14 BY MR. GARRETT:

15 Q. And let's go to the back where we have
16 an example of one of the WGNA surveys. You
17 said you did review the Bortz report; correct?

18 A. Yes, I did.

19 Q. And in your review, did you come
20 across what is up on the screen here, the WGNA
21 America 2010 Programming Summary?

22 A. I may have looked at it.

23 Q. But you are aware that at least with
24 respect to those respondents whose only distant
25 signal was WGNA, that Bortz provided them in

1 advance of the survey with a summary of all the
2 programming on WGNA; correct?

3 A. I don't recall.

4 Q. So when you formulated your criticism
5 here of Bortz about not giving any indication
6 of the volume of programming, you did not have
7 in mind how they treated the WGNA-only
8 respondents?

9 A. I did not have that in mind.

10 BY MR. GARRETT: Geoff, let me ask you
11 to put up the Howard Homonoff testimony from
12 the 2004-'05 proceeding. I believe it is 1146.

13 BY MR. GARRETT:

14 Q. Do you have that before you,
15 Ms. Hamilton?

16 A. 1146? I do.

17 Q. That's the written Direct Testimony of
18 Howard Homonoff, and you refer to that at
19 page 3, Note 1, of your written Direct
20 Testimony, do you not?

21 A. Yes, I do.

22 Q. And you reviewed Mr. Homonoff's
23 written testimony in preparation for testifying
24 in this proceeding?

25 A. Yes.

1 Q. Did you review his oral testimony,
2 too?

3 A. Briefly, yes -- I'm sorry, oral
4 testimony? No, just his Direct Testimony,
5 direct written.

6 Q. The written Direct Testimony?

7 A. Yes.

8 BY MR. GARRETT: Your Honor, I will
9 move for admission here of Exhibit 1146, the
10 testimony of Howard Homonoff in the 2004-'05
11 proceeding.

12 MS. PLOVNICK: No objection.

13 JUDGE BARNETT: 1146 is admitted.

14 (Exhibit Number 1146 was marked and
15 received into evidence.)

16 MR. GARRETT: Thank you, your Honor.

17 BY MR. GARRETT:

18 Q. Now, if you go to page 4 in
19 paragraph 6 -- do you have that, Ms. Hamilton?

20 A. I believe I do.

21 Q. Okay. And so it talks here generally
22 about the assignment that he had in the
23 2004-'05 proceeding. Do you see that?

24 A. Yes.

25 Q. "Provide an industry expert

1 perspective on the process by which cable
2 operators -- sometimes referred to as multiple
3 system operators, or MSOs -- negotiate for
4 carriage of programming on cable systems, the
5 factors that influence their programming
6 carriage decisions." Do you see that?

7 A. Yes.

8 Q. And that is similar to the testimony
9 you are providing here today too; correct?

10 A. Yes.

11 Q. If we go to paragraph 7.

12 A. Yes?

13 Q. This is where he offers his general
14 opinions. Do you see that?

15 A. Yes.

16 Q. And the first one is, "The process by
17 which cable operators making their programming
18 decisions is typically driven by programming
19 executives at corporate headquarters and not at
20 the individual system level." Do you see that?

21 A. Yes, I do.

22 Q. And that is the testimony you are
23 providing here today as well; correct?

24 A. Yes.

25 Q. And then he goes on to say, "In this

1 process, corporate programming executives
2 synthesize a number of factors that they hope
3 will attract and retain subscribers, including
4 most importantly subscriber preferences." Do
5 you see that?

6 A. Yes, I see that.

7 Q. And you agree with that?

8 A. I don't know if I agree with "most
9 importantly," but it's an important factor, if
10 that's what you're asking.

11 Q. Okay. And then Mr. Homonoff, you will
12 recall, went on to conduct a separate analysis
13 of cable networks; correct?

14 A. I don't know.

15 Q. Let's go to paragraph 8. I will give
16 you a chance to just look at that paragraph.
17 And if we go down to the last sentence --

18 A. I'm sorry; I'm still reading.

19 Q. I'm sorry. Excuse me.

20 A. Okay.

21 Q. Are you done now?

22 A. Yeah.

23 Q. Thanks. I just wanted to focus down
24 on the bottom there about the utility and
25 validity of looking to the cable network

1 marketplace for guidance, and a hypothetical
2 distant signal marketplace is consistent with
3 my experience. Do you see that?

4 A. Is that a carryover from page 5?

5 Q. Yes. "A hypothetical marketplace for
6 the acquisition of programming in distant
7 signals is closely analogous with the market
8 for whole cable networks, which represent a
9 large majority of the programming MSOs provide
10 to their subscribers." Do you see that?

11 A. I see that.

12 Q. Would you agree that the cable network
13 marketplace is closely analogous to this
14 hypothetical marketplace that you discussed in
15 your earlier testimony?

16 A. I haven't given it much thought, but I
17 don't disagree with it.

18 Q. Okay. So if we go to Figure 3 in
19 page 20, Mr. Homonoff concluded that by
20 examining the top 25 cable networks in 2004,
21 found that over 90 percent of the programming
22 in those networks would be classified as
23 Program Suppliers programming, in the meaning
24 of the definition of this proceeding. Do you
25 see that?

1 A. Yes.

2 Q. If we -- I know you haven't done any
3 analysis, but just based on your experience
4 here in years 2010 to '13, do you expect that
5 if we focused just on the top 25 cable networks
6 that the vast majority of programming on those
7 networks would be what we would consider to be
8 Program Suppliers programming?

9 A. I would think that the majority,
10 certainly. Yes.

11 Q. And if we broadened our search to say
12 the top 50, would you say the same thing?

13 A. Yes.

14 Q. All right. Approximately how many
15 cable networks were there in the years 2010 to
16 '13?

17 A. Over 100.

18 Q. And so if we looked at all of those
19 cable networks, would you agree that
20 probably -- to use your term -- the majority of
21 programming on that was Program Suppliers
22 programming?

23 A. Yes.

24 Q. And a very small portion of it would
25 be sports programming; correct?

1 A. Right.

2 Q. Okay. You've used the term "viewing"
3 a number of times in your written testimony and
4 again this morning.

5 A. Yes.

6 Q. By "viewing," are you talking about
7 ratings or shares or Qs or something else?

8 A. I'm not differentiating. Just greater
9 or lesser.

10 Q. I'm sorry; greater or lesser what?

11 A. Viewership. More people watching.

12 Q. You focused on the number of people
13 who are watching; correct?

14 A. Yes.

15 Q. And ratings is one of the ways to
16 determine the percentage of households who are
17 tuned to a particular program at any given
18 time; correct?

19 A. Right.

20 Q. And you talked about your use of
21 Nielsen ratings data; correct?

22 A. I've certainly reviewed it, yes.

23 Q. And data on prime time delivery as
24 well as 24-hour delivery?

25 A. Yes.

1 Q. Have you reviewed Dr. Gray's testimony
2 in this proceeding?

3 A. I had reviewed it at one point, yes.

4 Q. Do you know how he calculates viewing?

5 A. I don't recall.

6 Q. If we just focus on ratings for a
7 moment, I'll give you a hypothetical. Assuming
8 you have two cable networks. One has a 24-hour
9 2 rating and the other one has a 24-hour 1
10 rating. Got that?

11 A. Yes.

12 Q. Would you pay twice as much for the
13 first one as you would for the second one?

14 A. Not necessarily.

15 Q. What factors would go into determining
16 how much you would pay for that second one,
17 either one of those two cable networks?

18 A. All of the factors that I've cited.
19 The fact that one may be already carried, and
20 so legacy carriage. It would also be important
21 to know whether the networks were bundled with
22 any other networks and what the cost -- I can't
23 necessarily determine what the cost is that I'm
24 willing to pay. It's what is offered to me --
25 at whatever price it's offered to me is

1 certainly negotiated. But that's not something
2 that I can just make up and bring to the table.

3 Q. It is not necessarily a one-to-one
4 correlation between viewership and value;
5 correct?

6 A. That's correct.

7 Q. And you understand that the Judges in
8 the last litigated proceeding rejected or
9 refused to give any weight to the viewing
10 studies presented by Program Suppliers?

11 A. I saw that.

12 Q. And you understand that their
13 predecessors in the proceeding before that
14 reached the same conclusion; correct?

15 A. I think I've seen references to it. I
16 don't know that I've read that.

17 Q. Now, we need to go back to what has
18 been referred to here as ancient times to find
19 a Phase 1 determination of the weight accorded
20 the Program Suppliers study, so the 1990-'92
21 proceeding; is that right? Are you aware of
22 that?

23 A. No, I'm not aware of it.

24 Q. Let me just ask you to pull up the
25 1990-'92 CARP report, and go to page 43,

1 Tab 12.

2 A. I'm sorry; what are we looking at?

3 Q. We are looking right now at page 43.

4 A. Of?

5 Q. Exhibit 6034.

6 JUDGE BARNETT: What is that? 6034
7 again, please?

8 MR. GARRETT: It is the CARP report
9 from the 1990-'92 proceeding, which we have
10 offered.

11 JUDGE BARNETT: Thank you.

12 BY MR. GARRETT:

13 Q. So let's just go to the final
14 paragraph, first sentence.

15 A. Okay.

16 Q. "Certainly, viewing is a significant
17 factor in value."

18 A. That's what it says.

19 Q. And would you agree with that?

20 A. Yes.

21 Q. Now, go to the next page, page 44.

22 A. Yes.

23 Q. And we go to the third full sentence,
24 which has been used, I think, three separate
25 times in this proceeding. Do you see that? It

1 says, "It is disingenuous to say that the cable
2 system's interest is only in attracting
3 subscribers, but is totally unconcerned with
4 whether or not the subscriber, in fact, watches
5 the programming." Do you see that?

6 A. I see that.

7 Q. Do you agree with that?

8 A. I would need to read the entire
9 passage and make certain it makes sense in
10 context. This is the first time I've seen it.

11 Q. Let me ask you this. They refer here
12 to the Program Suppliers industry witness in
13 that proceeding who testified that, "Cable
14 system operators are more willing to carry the
15 more heavily watched, higher-rated services."
16 Do you see that?

17 A. Yes.

18 Q. Would you agree with that?

19 A. Yes.

20 Q. And the next one, "Cable system
21 operators receive Nielsen data in a variety of
22 ways." Do you agree with that, too?

23 A. Yes.

24 Q. Now, if we flip back to page 30 of the
25 CARP -- of that same document, you see here the

1 shares that Program Suppliers presented in 1990
2 to '92. They are in that box and I will just
3 represent to you that their viewing shares were
4 between 80 and 83 percent. Do you see that?

5 A. Yes.

6 Q. If we now go to page 143, these were
7 the final awards. I will represent to you that
8 the Program Suppliers got between 55 and
9 56 percent of the basic funds in those years.
10 Do you see that?

11 A. I see that.

12 Q. So that is substantially less than the
13 amount of viewing shares; correct?

14 A. That is less.

15 Q. It's about 25 to 28 percentage points
16 less than the viewing shares?

17 A. Doing the math, I think that's right.

18 Q. If we go to page 170, you will see
19 there is actually a dissent in that arbitration
20 panel. They said they would have accorded more
21 weight to Bortz. Do you see that?

22 A. Would you like me to read the whole
23 thing?

24 Q. No, I think if we just go to the
25 second paragraph. "In summary, I differ as to

1 three principal matters and I am persuaded that
2 the Bortz survey is the best tool available for
3 measuring relative values in the relevant
4 marketplace and that it should receive far more
5 weight than it does." And he refers to the
6 supply side aspects which has been raised in
7 that proceeding, and then goes on.

8 One last thing. The CARP panel, in
9 the 1998-'99 proceeding, did, in fact, put more
10 weight on Bortz and points of viewing.

11 MR. GARRETT: And if we could just go
12 to the Program Suppliers v. Librarian decision,
13 Geoff.

14 MS. PLOVNICK: Your Honor, this
15 document is not in the record. I understand it
16 is a decision of the D.C. Circuit, but it has
17 been pointed out.

18 JUDGE BARNETT: Has it been marked?

19 MR. GARRETT: No, your Honor. I would
20 ask that you take official notice of it.

21 JUDGE BARNETT: Can you put the
22 citation in the record, please?

23 MR. GARRETT: Certainly, your Honor.
24 It is Program Suppliers v. Librarian, 409 Fed
25 3rd, 395. And we are going to go to page 402,

1 the decision of the D.C. Circuit, 2005.

2 JUDGE BARNETT: Thank you.

3 BY MR. GARRETT:

4 Q. Now, do you have that in front of you?

5 A. No, I'm sorry. Where is that in my
6 notebook?

7 MR. GARRETT: May I approach the
8 witness, your Honor?

9 JUDGE BARNETT: You may.

10 MR. GARRETT: This is the decision and
11 we are going to refer to page 5, there.
12 (Indicating.)

13 THE WITNESS: Thank you.

14 MR. GARRETT: If we could go one
15 sentence above that, Geoff.

16 BY MR. GARRETT:

17 Q. You see on the right-hand side the
18 portion that has been highlighted here where
19 the D.C. Circuit said, "Nor did the CARP act
20 unreasonably in declining to rely on Nielsen
21 for direct evidence of viewing." Do you see
22 that?

23 A. I'm sorry; I can't find that on the
24 page that I'm looking at. Could you show me
25 where it is in the underlying document, if you

1 could move that box.

2 Q. I think if you go to page 5.

3 A. Yes, I'm on page 5.

4 Q. And on the right-hand side, right
5 before the final paragraph.

6 A. I have a different page. You handed
7 me page 5 open and that is not this page.

8 MR. GARRETT: May I approach again,
9 your Honor?

10 JUDGE BARNETT: Certainly.

11 THE WITNESS: The pagination is
12 different than the one on the screen.

13 BY MR. GARRETT:

14 Q. The question I was going to ask you is
15 you haven't read this decision before, have
16 you?

17 A. No.

18 Q. You are not familiar with it at all?

19 A. No.

20 Q. You're not certain how the D.C.
21 Circuit has treated viewing in these
22 proceedings?

23 A. No.

24 MR. GARRETT: Okay. I have no further
25 questions, your Honor. Thank you Ms. Hamilton.

1 THE WITNESS: Thank you.

2 JUDGE BARNETT: Who is next? Not
3 everyone at once.

4 CROSS-EXAMINATION

5 BY MR. HUNZIKER:

6 Q. Hi, Ms. Hamilton. My name is Rob
7 Hunziker. I'm asking questions on behalf of
8 the Public Television Claimants.

9 A. Great.

10 Q. The first thing I wanted to talk about
11 is that you mentioned in your written Rebuttal
12 Testimony that you disagree with Dr. Crawford's
13 position that gave a zero value to duplicated
14 programming; right?

15 A. That's correct.

16 Q. And in regard to that, I think you
17 referenced a Charter system in Coldwater,
18 Michigan, that carries this local PBS affiliate
19 and also imports a distant PBS signal. Do you
20 remember that?

21 A. That sounds right.

22 Q. So one reason why you disagree with
23 Dr. Crawford's method is because a program
24 might be watched by different constituencies on
25 different channels; right?

1 A. Yes.

2 Q. And so one constituency might set the
3 dial to, say, the local PBS affiliate to watch
4 both the national programming and the unique
5 content of that affiliate?

6 A. Yes, that's correct.

7 Q. And a different constituency might do
8 the opposite; have the local affiliate channel
9 for whatever programming it offers and then
10 just keep watching the national programming
11 there, as well?

12 A. Yes.

13 Q. So, in effect, these different
14 constituencies of cable subscribers might have
15 sort of brand loyalty to one channel or
16 another?

17 A. That's accurate.

18 Q. Another result though is they'll stick
19 to that particular signal or brand for both the
20 network programming and the unique programming?

21 A. That would make sense to me, yes.

22 Q. So even if some content might be
23 duplicated on the two separate channels, there
24 is some value to carrying both signals?

25 A. Yes.

1 Q. And even some programming that is
2 duplicated might be more valuable than, say,
3 having a blue screen or black screen and not
4 having that content?

5 A. I think it would always be more
6 valuable, yes.

7 Q. And this would apply even to some
8 smaller signals, not just the large signals?

9 A. I don't see why it wouldn't apply
10 equally.

11 Q. And now I also wanted to also talk a
12 little bit about legacy carriage. So you
13 mentioned that it is very difficult for a CSO
14 to drop a channel once they've begun carrying
15 it, because subscribers might leave; right?

16 A. It's difficult, yes.

17 Q. And so a CSO would need to think long
18 and hard about whether or not to add program --
19 or add a signal before doing so?

20 A. Yes.

21 Q. So they want to focus on something
22 like what value that signal could add to their
23 particular system?

24 A. I would agree.

25 Q. And you would agree, then, that if a

1 CSO chooses to carry one station instead of
2 another, that that reflects the belief that
3 that station is going to add more value to
4 their particular system than the other station
5 they did not choose to carry?

6 A. If you are talking about two distant
7 signals.

8 Q. Right.

9 A. Yes, I would agree.

10 Q. And along the same lines, wouldn't you
11 agree that if a CSO were to continue to carry a
12 signal -- a distant signal, wouldn't that
13 reflect a choice that there is more value to
14 continuing to carry that signal than to replace
15 it with some other distant signal?

16 A. I don't know if the decision is to --
17 would be to replace it with another distant
18 signal or to take it off and not replace it.
19 But I would agree that it reflects the
20 cost-benefit analysis of being a positive
21 factor for that MSO.

22 Q. Okay. Thank you. So the last topic I
23 want to talk to you about is viewing. We were
24 just discussing this. And you mentioned in
25 your written testimony that viewing information

1 is very important to cable operators when
2 assigning values to the possible signal to
3 carry; correct?

4 A. Yes.

5 Q. Actually, I think you said earlier it
6 might be the most important?

7 A. Yes.

8 Q. And when you're a CSO, or a system
9 operator, who is making carriage decisions,
10 they wouldn't contemplate adding a new signal
11 without considering viewing data; right?

12 A. To the extent that it's available,
13 they would want to consider it, yes.

14 Q. And that would include something like
15 Nielsen data or some comparable measurement?

16 A. Yes.

17 Q. And so let's say hypothetically you
18 were considering a distant signal to add and
19 just learned that one of the dramas on it had
20 just become one of the biggest hits on
21 television. That would allow the
22 decision-maker to assign more value to that
23 particular signal than previously?

24 A. I -- yes, I think that's correct.

25 MR. HUNZIKER: I have no further

1 questions.

2 JUDGE BARNETT: Commercial Television,
3 you look like you are ready.

4 MR. MacLEAN: No questions, your
5 Honor.

6 JUDGE BARNETT: No questions.
7 Canadian group?

8 MR. SATTERFIELD: No questions, your
9 Honor.

10 JUDGE BARNETT: I'm sorry; there you
11 are. Devotionals? No questions?

12 Redirect, Ms. Plovnick?

13 MS. PLOVNICK: I have just one
14 question, I think.

15 JUDGE BARNETT: You could have two.
16 (Laughter.)

17 MR. STEWART: She doesn't have time
18 for two.

19 (Laughter.)

20 MS. PLOVNICK: Excuse me one moment,
21 your Honor. Thank you, your Honors. And it
22 was faster than I had expected.

23 BY MS. PLOVNICK:

24 Q. All right. So Ms. Hamilton, I just
25 really briefly wanted talk about something that

1 you discussed with Mr. Garrett. And I will
2 refer you to -- he talked with you about the
3 WGNA Programming Summary for 2010 and he asked
4 you some questions about whether or not you had
5 considered that in forming your conclusions.

6 I just want to ask you to refer to
7 Exhibit 6009, which is your Rebuttal Testimony
8 for this proceeding and take a look at page 8
9 and Footnote 1, and I wanted to know if that
10 refreshes your recollection regarding this
11 topic.

12 A. I'm sorry; what page?

13 Q. Exhibit 6009, page 8, and paragraph
14 under Subheading C and Footnote 1.

15 A. Yes. Yes.

16 Q. It refreshes your recollection?

17 A. Yes.

18 Q. Did you take the WGNA Programming
19 Summaries into account in forming your opinion
20 about the Bortz survey and volume?

21 A. Yes.

22 Q. And what was your opinion?

23 A. It's -- it really didn't have an
24 effect. It was disclosed only to those
25 28.25 percent of those systems.

1 Q. All right. Thank you, your Honor,
2 that was the only question I had.

3 JUDGE BARNETT: Anything from the
4 Judges?

5 Thank you, Ms. Hamilton. You may be
6 excused.

7 Mr. Dove?

8 MR. DOVE: Your Honor, over the
9 weekend as we were watching basketball games
10 and Public Television programming --

11 (Laughter.)

12 MR. DOVE: -- the parties tried to
13 reach an agreement. We are still in the
14 process of reaching an agreement of a proposal
15 to make with regard to dates for post-trial
16 briefing and closing arguments. We are very
17 close to reaching an agreement, I think. So if
18 we had another 5 or 10 minutes to consult, we
19 might be able to present it to you, if that is
20 something that your Honors wish to have from us
21 at this point, it would be helpful.

22 JUDGE BARNETT: It would be very
23 helpful, because I was going to hold you
24 captive for another ten minutes to tell you
25 what our thoughts were on that. We would like

1 to have your input. Five minutes, and let us
2 know when you are ready. Thank you.

3 (A recess was taken at 11:49 a.m.,
4 after which the trial resumed at 12:11 p.m.)

5 JUDGE BARNETT: Mr. Dove, you are the
6 designated spokesperson.

7 MR. DOVE: Regrettably so, your Honor.
8 We were able to reach agreement on most
9 matters. We would propose that most findings
10 of fact and conclusions of law be due on Friday
11 April 27th; that reply findings be due on
12 May 15th; that there be a page limit imposed of
13 100 pages for the proposed findings of fact and
14 60 pages for the reply.

15 And the only thing we were not able to
16 come to agreement on -- at least not yet -- is
17 a proposed date for closing arguments. Not
18 knowing the Judges' preferences, but also we
19 have a number of conflicts, business conflicts
20 between May 15th and Memorial Day that made it
21 difficult to reach an agreement at this time on
22 that issue.

23 JUDGE BARNETT: Thank you. We will
24 take those requests under advisement. And I
25 will, without filling in the dates, nonetheless

1 give you my prepared remarks regarding these
2 very issues.

3 We do intend to schedule closing
4 arguments after you have had the opportunity to
5 submit proposed findings and proposed
6 conclusions of law. Our calendar, as you are
7 aware -- because most of you will be spending a
8 lot of time with us this year -- is quite full.
9 And we also are working with a statutory
10 deadline, which is 11 months from the date of
11 your joint settlement conference report. And I
12 should have looked that up when I was
13 backstage, but I did not. But I'm sure you
14 know what that is and you know that it takes us
15 a while to prepare these determinations.

16 We will confer concerning your
17 proposals and enter an order today directing
18 the dates for filing of proposed findings and
19 proposed conclusions.

20 We can tell you now that you will be
21 disappointed by our limitations. We felt that
22 it was necessary for us to impose strict
23 limitations, because in the past few
24 proceedings we have received over a thousand
25 pages from one participant and there isn't any

1 way we can handle that volume of material.

2 So we are not going to permit that
3 kind of -- your limits are admirable, and I
4 appreciate that, but in this instance, in this
5 proceeding, we are directing that each
6 participant file proposed findings of fact with
7 direct reference and citations to the record in
8 this proceeding. Each proposed finding of fact
9 must be relevant and material to the
10 determination the Copyright Act requires the
11 Judges to make. Each participant shall propose
12 conclusions of law that relate directly to the
13 legal standards guiding the Judges'
14 determination.

15 Proposed conclusions of law may be
16 derived from statute, regulation, applicable
17 precedent, or other primary or secondary legal
18 authority. Participants shall support each
19 proposed conclusion of law with one or more
20 citations to relevant authority.

21 The Judges are not accepting closing
22 briefs. Participants must not use their
23 valuable word limits that we are setting for
24 proposed findings of fact and for proposed
25 conclusions of law to advocate or argue for or

1 against a particular finding or conclusion.

2 You are all very talented and very
3 experienced. You know the difference between a
4 finding of fact, a conclusion of law, and an
5 argument or advocacy. What we are accepting is
6 proposed findings of fact and proposed
7 conclusions of law.

8 The argument or advocacy certainly
9 will happen during the oral argument at the
10 conclusion, and we're not limiting that.

11 Now, I'll be more precise. If one
12 participant proposes a finding of fact with
13 reference to the record that is contrary to
14 another participant's proposed findings of fact
15 also with reference to the record, that is to
16 be expected in an adversarial proceeding. The
17 Judges will weigh the evidence proffered by
18 each participant and make a finding upon which
19 they will rely in making their final
20 determination.

21 Likewise, each party may propose
22 conclusions of law, supporting each proposed
23 conclusion with a reference to pertinent legal
24 authority or authorities. Participants are not
25 permitted to contest an opposing party's

1 proposed legal conclusions.

2 The Judges will study the parties'
3 proposed conclusions of law, determine which
4 are applicable to the task of making the
5 determination in this phase of this proceeding,
6 and adopt or modify the conclusions according
7 to the Judge's own reasoning and the reasoning
8 of the panel.

9 The next sentence is where we had
10 filled in a date, which we will skip over until
11 we have had a chances to confer about your
12 proposed dates.

13 We have set an aggregate word limit
14 for both submissions -- that is proposed
15 findings and proposed conclusions -- of
16 25,000 words. Participants may exercise their
17 discretion when allocating the 25,000 words
18 between findings and conclusions.

19 Those words are exclusive of the table
20 of contents, table of authorities, signature
21 page, if that's all that is on the page -- and
22 certificate of service, which I think the
23 electronic system does now.

24 Now, even though I did say at the
25 outset that you don't use your proposed

1 findings and proposed conclusions to contest
2 another party's position, you will have an
3 opportunity to file a responsive submission,
4 and we will have a date for that, at your
5 discretion. It's not required. But each
6 participant may file one response addressing in
7 the response its position with regard to the
8 other party's initial proposed findings and
9 proposed conclusions.

10 Responsive submissions will be limited
11 to 7,500 words total. For example, if a
12 participant spends 6,500 words opposing another
13 party's proposed findings of fact, then that
14 participant will have 1,000 words left to
15 respond to other parties' proposed conclusions
16 of law.

17 Each submission must include response
18 to all other opposing parties. In other words,
19 no participant may submit more than one
20 responsive submission. We don't want MPAA's
21 response to the Sports, and MPAA's response to
22 the Devotionals, and MPAA's response to the
23 Canadians. We want one response. And Mark
24 Twain, or any of the other people who have been
25 attributed with the comment, as they would say:

1 I would have written a shorter letter, but I
2 didn't have enough time. Well, we are going to
3 be sure you have enough time to write these
4 concisely so that they are impactful without
5 being heavy. Although it is electronic now, we
6 don't have to heft around a thousand pages, but
7 you know what I mean.

8 Proposed findings and conclusions, as
9 well as the responsive submissions, must
10 conform to the paragraph numbering requirements
11 of our procedural rule, which is 37 CFR
12 Section 351.14, paragraph C. Each paragraph in
13 a response must likewise indicate the paragraph
14 numbers to which each response corresponds.

15 Each responsive paragraph must also
16 contain citations to the record in relation to
17 proposed findings and legal citations in
18 relation to proposed conclusions of law.

19 You are going to have to use initials,
20 because I'm certain that paragraph numbers will
21 run parallel. So use initials for which
22 party's paragraph number you are opposing or
23 responding to.

24 Participants must not include in
25 either their proposed findings or conclusions,

1 or their responsive filings, other paragraphs
2 or arguments. Only those that are responsive
3 directly to another -- excuse me, I didn't mean
4 -- I am only talking now about the responses --
5 only paragraphs that are responsive to other
6 parties' proposals.

7 Submissions, when we receive them,
8 including proposals and responses thereto, will
9 be included in the record of this proceeding
10 and we will have a transcript of closing oral
11 argument.

12 Other than that, I believe it is
13 incumbent upon me to say now that this record
14 is closed with those exceptions.

15 Any questions?

16 Mr. Satterfield?

17 MR. SATTERFIELD: Your Honor, on the
18 first day of the hearing, we informed the Court
19 that we had two videos that we did not upload
20 to the Court's -- to the docket, to the
21 electronic docket. I didn't realize we could
22 do it. And we requested permission to upload
23 them as restricted and you were taking that
24 under advisement. I don't know if you had
25 considered that any more or sort of forgot

1 about it.

2 JUDGE BARNETT: Completely forgot
3 about it, to be honest. Was there any
4 objection to those?

5 MR. SATTERFIELD: No.

6 JUDGE BARNETT: No? You need to have
7 someone at your office then confer with
8 Ms. Blaine or Ms. Whittle to make sure that
9 happens. Since we have given prior permission,
10 those can be included in the record.

11 MR. SATTERFIELD: Right. Thank you,
12 your Honor.

13 JUDGE BARNETT: The outstanding
14 question about whether it could be restricted?

15 MR. SATTERFIELD: Yes.

16 JUDGE BARNETT: I don't know if
17 Ms. Whittle received a response -- did you ask
18 of NIC whether we could restrict the video?

19 JUDGE FEDER: I don't know if it was a
20 technical question or if it was a question of
21 restriction, not confidentiality, but there was
22 a question about Copyright issues.

23 JUDGE BARNETT: Thank you, Judge
24 Feder.

25 MR. SATTERFIELD: You said we would

1 talk about it afterward.

2 JUDGE BARNETT: Right.

3 MR. SATTERFIELD: I will say that my
4 initial concern was that I know in the past
5 submissions to the CRP have been available if
6 you just did a Google search. But I believe
7 now, since you have to actually log into the --
8 you have to hit an accept that actually gets to
9 the docket, those pleadings don't seem to
10 appear in just normal Internet searches. So
11 some of my concern has been alleviated. The
12 whole electronic docket system is brand new to
13 us.

14 JUDGE FEDER: And us.

15 JUDGE BARNETT: But it is available to
16 the public.

17 MR. SATTERFIELD: Yes.

18 JUDGE BARNETT: A guest user can sign
19 on and look at what is in the record --

20 MR. SATTERFIELD: Yes, that's correct.

21 JUDGE BARNETT: -- signing in and
22 being a participant.

23 MR. SATTERFIELD: That is, as you
24 know, our program is licensed in Canada, not in
25 the United States. That was my immediate

1 concern.

2 JUDGE BARNETT: I think in that
3 circumstance, we have to restrict it because
4 it's not licensed for broadcast here. So we
5 will do that.

6 MR. SATTERFIELD: Thank you, Your
7 Honor.

8 JUDGE BARNETT: You may do that. And
9 if you have difficulty --

10 MR. SATTERFIELD: I will submit it as
11 designated as restricted, when we have uploaded
12 it.

13 JUDGE BARNETT: Thank you, and I
14 apologize for not keeping that in the
15 forefront. I am glad that we resolved that.

16 MR. SATTERFIELD: Not a major issue.

17 JUDGE BARNETT: Anything further?
18 Thank you all. We will see you again, sooner
19 rather than later, I'm sure. And some of you
20 we will see even sooner than that.

21 Let me just say -- unfortunately, I
22 don't see any clients here still, but I always
23 like to say, when I have the opportunity to
24 your clients, that they have been well
25 represented. I can't always say that, but I

1 can say that with confidence in this
2 proceeding. It's been a very professional and
3 collegial proceeding, and I appreciate all the
4 courtesies you have extended to one another.

5 And we will at this point recess until
6 time for closing arguments. Thank you.

7 (The hearing was recessed at 12:26
8 p.m., to reconvene at a time to be
9 announced.)

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1 C O N T E N T S

2 WITNESS: DIRECT CROSS REDIRECT VOIR DIRE

3 SUE HAMILTON

4 By Ms. Plovnick 4282

5 By Mr. Garrett 4338

6 By Mr. Hunziker 4378

7

8 CONFIDENTIAL SESSIONS: NONE

9

10 E X H I B I T S

11 EXHIBIT NO: MARKED/RECEIVED REJECTED

12 1146 4364

13 1150 4354

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CERTIFICATE

I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

3-19-18
Date

Joseph Strickland
Signature of the Court Reporter

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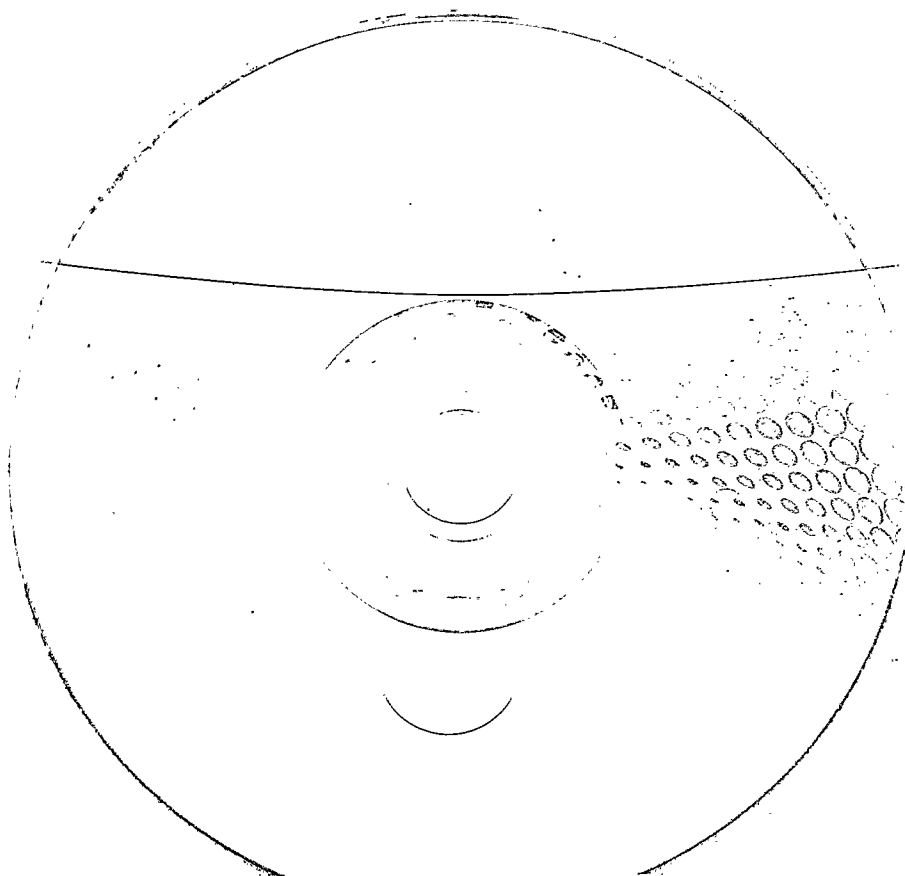
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